Distance Learning in Legal Education: Design, Delivery and Recommended Practices

Working Group on Distance Learning in Legal Education

2015 Edition

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Introduction to the 2015 Edition

In 2012, the Working Group for Distance Learning in Legal Education published a paper outlining initial suggestions and considerations for law schools considering launching distance learning projects. In 2013, the Working Group began revisions to this paper, intending to update and expand the information and discussion therein to reflect the continuing growth of the field and share important recent learning about it. After several working meetings, a final editorial team was put together to reconcile multiple drafts and bring a single voice to the document in this edition.

The upside of producing a work in collaboration with groups coming together over multiple years is benefitting from the experience and knowledge of a wide range of legal experts. This paper is the result of the input of dozens of such pioneers in distance learning in legal education. The downside of open source collaboration is, of course, the impossibility of tracking all the people and institutions who have contributed to the final product. Appendices H and I list meetings of the Working Group (and the host institutions) and many individual contributors and institutions. We have reached out to all the Working Group members and participants we've been able to locate, in an effort to make these lists as complete as possible. If we have missed anyone – and it is likely that we have -- we sincerely apologize.

We hope you will find this paper useful and informative as, in the spirit of this Working Group, you try new ideas and technologies and share your experiences with your colleagues.

Rebecca Purdom
Greg Brandes
Karen Westwood
Editorial Team, 2015

Acknowledgements

The Working Group owes its existence to some far-sighted pioneers in distance education who realized its potential early on and committed themselves to open and ongoing collaboration -- and this publication. Meeting in Cambridge in the Spring of 2010 and again in the fall of 2011, these individuals established the Working Group for Distance Learning in Legal Education, a welcoming group of experts who met to collect and share developing knowledge about distance education in law. For its existence, the Working Group appreciates the early efforts and attention of the Program for the Legal Profession at Harvard Law School (now the Center for the Legal Profession) and the early attentions of Faculty Director and Vice Dean of Global Initiatives David Wilkins, then Executive Director Erik Ramanathan, Administrative Director Hakim Lakhdar, and the wisdom of experts in the field, including early pioneers Dean Barry Currier, Associate Dean Craig Gold, and Associate Dean Ellen Podgor.

This "Distance Learning in Legal Education: Design, Delivery and Recommended Practices" is – appropriately – the collected work of many good colleague and friends. Professor Oliver Goodenough (Vermont Law School) has served as a centering force for the group and the project since early days, contributing several sections and ensuring that drafting and governance of a diffuse and occasionally wayward project marched forward with steadfast good humor and good will. Rebecca Purdom led many

of the early meetings, bringing her excellent organizational abilities as well as her deep thinking on and experience in distance legal education. Will Monroe (LSU Law) kept the paper focused on research and contributed very significantly and thoughtfully to individual chapters. The Working Group also appreciates the significant editing of this edition that was contributed by (alphabetically): Professor Greg Brandes (Concord Law School), Professor Rebecca Purdom (Vermont Law School) and Librarian Karen Westwood (William Mitchell College of Law). Professor William Byrnes (Texas A&M University School of Law), Ashley Dymond (U. C. Hastings College of Law), and Director Gary Heald (Georgetown Law Center) contributed important editorial work and changes to the interim drafts from which this edition was assembled. While honoring the diverse contributions of many, these authors and editors collected and organized the individual texts. Katherine Boyle, a third-year student at William Mitchell College of Law provided excellent proofreading and copyediting. She brought expertise and attention to detail at a critical stage in this project. We appreciate all of these colleagues and all they did to bring this edition over the finish line.

The meetings of the Working Group are truly open, welcoming, and productive thanks to the many generous individuals and institutions that have hosted and organized them over the years. A list of hosting institutions is in Appendix I, and in addition we'd like to thank (chronologically) Dean Martha Minow (Harvard Law School), Dean Paul E. McGreal (Dayton Law School), Dean Rudy Hasl (Thomas Jefferson Law School), Dean Phyliss Craig-Taylor (North Carolina Central University School of Law), Dean Nancy Staudt (Washington University College of Law), Dean Eric S. Janus (William Mitchell College of Law), Dean Frank H. Wu (U.C. Hastings College of Law) for generously hosting Working Group meetings at their law schools. We also deeply appreciate Dean Martin Katz and Professor David Thomson, who graciously hosted a critical editorial "summit" at University of Denver Sturm College of Law, without which this paper would not be a reality in its present form.

Special thanks are due to Harvard Law School, longtime web host of the 2012 Working Paper, and Vermont Law School for significant faculty and administrative support to produce the 2012 Working Paper. Critical organizational and administrative help for the Working Group and this paper also came from Cindy Wiegand, who coordinated the meetings, administration, and communication of the Working Group for the first formative years. Jennifer Cooper and Ashley Dymond provided assistance in planning meetings, helping connect participants, and collecting archives and drafts. We appreciate them and their contributions to the success of the Working Group.

Finally, deep thanks are due to John Mayer, Executive Director of the Center for Computer-Assisted Legal Instruction (CALI). Through the support of CALI, the Working Group was able to finalize this revision of the "blue paper" and transform it into "Distance Learning in Education: Design, Delivery and Recommendations." We thank John and CALI for their ongoing and generous support.

The Working Group for Distance Learning in Legal Education

June, 2015

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Executive Summary

The Working Group for Distance Learning in Legal Education is pleased to present this paper on distance learning in legal education: design, delivery and recommended practices. This paper is intended to provide law schools and interested parties with a summary of distance learning opportunities, tools, and considerations.

Unlike other sectors in higher education, law schools have little experience with distance learning or online education. Recent technological advances, as well as economic exigencies, have lead several law schools to contemplate launching one or more online programs. To date, 29 ABA approved schools offer distance learning LLM programs[1] and a few offer non-JD masters programs. Recently, the American Bar Association loosened distance learning restrictions, allowing online classes to comprise up to 15 credits of a student's program after the first year. The ABA has also granted variances, allowing experimentation in distance learning at a variety of schools, including allowing the first hybrid (part online, part in-person) JD program, which launched in January 2015.

This paper attempts to guide those law schools beginning to explore distance learning opportunities. We recognize three fundamental questions, and attempt to provide a discussion of each.

First, there is the simple question of how to implement distance learning education. Law schools considering adding online programs have a variety of questions about the strengths of various approaches and technologies. This paper provides a summary of current topics and practices. We examine the strengths and challenges of synchronous and asynchronous education; consider platforms and pedagogy; and discuss a selection of tools that might be used to offer distance learning programs. The paper also discusses the need for assessment, both as a best practice for distance learning and in light of new ABA standards requiring evaluation of student outcomes.

Second, there are very technical questions about how to support students, teachers, and staff in the development and design of a new form of legal education. Thus we include sections on training for faculty, students, support staff, and student services staff engaged with distance learning courses. We also include information on institutional integration and administration, intellectual property rights, and a note on business and financial models for schools considering distance learning ventures.

Finally, there are institutional and accreditation concerns. This paper outlines these concerns and indicates areas in which the Working Group may conduct further research and policy development. Appendices include research topics, as well as a Model Law School Distance Learning Policy, relevant ABA

[1] Laira Martin, *Education Anywhere*, Nat'l Jurist, Feb. 2015, at 15, *available at* http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0215/index.php?startid=15#/14

standards, several model behavior policies, and additional practical guidance materials developed by the Working Group.

Throughout the paper, two themes emerge: concerns over educational quality, and the potential of distance learning programs to spread the educational mission of law schools. While we examine each theme in multiple aspects, we recognize that we have only identified, not answered, the questions on these topics. The promise of distance learning and its concurrent challenges are numerous and multifaceted. As time goes forward, we expect to publish additional titles with new information, both to provide fresh and evolving perspectives and to engage the larger law school community in an exploration of the challenges and opportunities of a new way of teaching law.

Chapter 1

Introduction

Collecting Challenges, Solutions, and Best Practices for Deans, Faculty, and Policymakers

There is little doubt that distance education is becoming one of the standard forms of instruction for American students at all levels of teaching. The impact of distance approaches has already been significant at the secondary level. Colleges are increasingly making distance offerings available, and graduate programs, such as law, are in the early stages of following suit. Distance learning is not just the province of for-profit and entry-level colleges; some of the nation's most prestigious universities are jumping on board. When the Working Group first met in 2011,[2] Stanford was already experimenting with free, massive online courses, and MIT had just opened up virtually all of its instruction on a non-credit basis in a free, online format it calls "open courseware".[3] Over the years the Working Group has met, this stream of developments has become a torrent. Stanford's experiment has led to its own iTunes U channel and helped to catalyze the formation of the for-profit outlet Coursera.[4] Harvard, MIT, Berkeley, and a host of other institutions have countered with their own online education portal—EdX—offering free courses from their catalogs.[5] MOOCs–Massive Open Online Courses–have come, made a splash, and then been declared a failure by pop-culture and the blogosphere.[6] In the meantime, schools across the spectrum have adopted online and distance learning as a guiding force in their pedagogy.

Several forces are driving these developments. Some are technical. The ubiquity of broadband Internet access has created opportunities for new forms of instructional delivery, allowing distance learning to move far beyond the "talking heads on the TV screen" history of such efforts as the University on the

[2] This working paper owes its existence to the collegiality and generousness of hundreds of participants in the Working Group for Distance Learning in Legal Education (WGDLLE). In eight collaborative working sessions over three and a half years, these colleagues gave openly of their expertise and time, to collect practices and tools, organize issues and their solutions, and prepare this paper to share with the legal education community. The participants are literally too numerous to mention, but a partial list of these individuals and their institutions is in Appendices H and I.

[3] See http://ocw.mit.edu/index.htm

[4] ("Take the world's best courses online, for free" – see https://www.coursera.org/).

[5] See https://www.edx.org/.

[6] Dan Friedman, The MOOC Revolution That Wasn't, TechCrunch, (Sept. 11, 2014), http://techcrunch.com/2014/09/11/the-mooc-revolution-that-wasn't.

Air.[7] Some are pedagogical. Our understanding of best practices for engaging and educating has grown with the addition of such elements as cognitive psychology and data-driven assessment techniques. As a result, we can design high-quality alternatives to classic "stand-up" teaching in the classroom or lecture hall. Some are social. Students of the "Digital Natives"[8] generation use computers and mobile devices to conduct most of their lives and ask: Why should education be any different? Some are economic. Although good distance instruction is not necessarily cheaper than the classroom equivalent, it does create some economies of scale and the possibility of an expanded market for worthy academic programs to serve populations heretofore unable to access educational opportunities. Finally, some driving forces are regulatory. As the federal government and various accrediting bodies— including regional higher education accreditors—become more accepting of distance delivery as a technique for quality teaching, the possibilities for putting all of this to work in practical ways is growing as well.

Legal education has been slower to adopt distance approaches than many other fields, in part because the American Bar Association (ABA), as the principal national accreditor of J.D. programs, has put very restrictive rules in place for distance education. Because of these restrictions, much of the innovation in legal distance instruction to date has occurred in law school master's programs, CLEs of various kinds, and internal training by legal delivery organizations ranging from large law firms to the JAG Corps and the Federal Judicial Center. As a result, best practice development for this field of teaching has been slow to evolve.

This paper represents an effort to provide insight and direction from experts in a rapidly emerging field. While the initial pioneers within the legal academy are obvious participants in a best practice discussion, we expect that others will join soon. The Working Group welcomes all who are interested. The distance learning tide is coming in for law as well, and when an aquatic experience is inevitable it is best to start the swimming lessons as soon as possible.[9]

One of the recurring themes in the conversations that lead to this working paper has been quality. There is an assumption by some who approach distance learning—both proponents and critics—that it is a low-quality, inexpensive approach that can be used to turn a quick profit. While such an idea may be attractive in an age of budgetary pressure in legal education, we believe this view is misguided. While there are financial reasons to pursue distance education, the individuals considering a distance education program must move beyond the view that it is a way to cheaply re-use existing in-class resources. Distance education is a sui generis approach to education that, at its best, creates a remarkable, engaging, high quality, and academically challenging experience. Indeed, when well-designed and delivered, distance education provides student outcomes on par or even superior to those of traditional in-class teaching.[10]

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[7] See http://www.wpr.org/webcasting/audioarchives_display.cfm?Code=uoa.

[8] Palfrey, John; Gasser, Urs (2008), *Born Digital: Understanding the First Generation of Digital Natives, Basic Books.*

[9] We are hardly the first to make such suggestions. Prescient and knowledgeable, David Thomsen admonished law schools to consider online education and provided strong pedagogical and technological guidance back in 2009 in his book Law School 2.0, Legal Education in the Digital Age (2009).

[10] See Means, et al, *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies*, United States Department of Education, September 2010, (a meta-analysis of more than 100 studies finding that, on average, distance learning has as good or slightly better learning and retention results than classes delivered in a residential setting).

Another recurring theme, which we believe has validity, is the opportunity to use distance learning approaches to spread the educational mission of law schools. Of course, different law schools will have very different approaches to spreading their teaching and influence through distance methods, but many law schools find the possibility of moving their reach beyond their campuses appealing. The flexibility and potential cost savings of distance instruction allow a new channel of education for many students whose resources of time and money limit their ability to pursue traditional forms of instruction, even in a part time program. We foresee that the spread of distance learning in the legal academy will increase access to justice for underserved populations. Distance learning will also permit schools to expand the reach of their expertise and philosophy of law. Vermont Law School, for instance, has a widely recognized program on Environmental Law. Under the traditional conception of legal education, Vermont Law School's ability to reach students is restricted to those who travel to its home campus in the village of South Royalton, Vermont. With distance learning programs, however, Vermont Law School's reach and impact, particularly in its areas of expertise and focus, is multiplied. This is a story that every law school in America can repeat around its areas of specialty and expertise.

Yet there are roadblocks inhibiting the growth of distance education in law. A principal impediment comes from the ABA accreditation rules applicable to J.D. programs. The ABA's Standard 306 currently allows only 15 credits to be taken through online courses, and none in the first year curriculum. Revisions to this policy in 2014 effectively allow an off-campus semester by allowing all 15 units to be taken in the same semester. Still, current ABA rules permit distance techniques to be blended into courses where the majority of teaching continues to be through local classroom instruction, and online elements constitute no more than 1/3 of the course, providing an avenue for some experimentation and learning to go forward.[11]

In law schools and programs that are not subject to ABA accreditation, however, entire programs are offered online. These programs operate primarily in California, where the state authorizes students from non-ABA schools to take the state bar exam, provided they meet other requirements.[12] Concord Law School (within Kaplan University), Northwestern California School of Law, and California School of Law are a few of the law schools that take advantage of this opportunity.

It will come as no surprise that our Working Group, drawn mostly from schools that either have developed programs or are actively developing the field, is actively encouraging the ABA to reconsider its current standards and support new standards that enable law schools to offer a greater variety of distance courses and programs. We also believe, however, there are legitimate concerns about quality in some implementations of distance legal education. We do not support arbitrary limitations on the availability of distance learning in the JD curriculum. But in light of the potential benefits of distance learning—and because it will inevitably become a part of the instructional mix—we support the efforts of accrediting bodies to develop standards that promote best practices in distance learning. We hope that the research and curricular knowledge that grow out of the efforts of this Working Group will contribute to these efforts.

[11] Some of the most important standards of the ABA related to distance education and teaching and learning are collected in Appendix D.
[12] See http://admissions.calbar.ca.gov/Education/LegalEducation/LawSchools.aspx#unaccredited.

Finally, we note that distance elements can more easily be incorporated in the non-JD programs offered by many schools, where ABA accreditation permits more innovation. This is a field where there is already significant adoption, including by several of the participants in this Working Group. Indeed, the availability of distance instruction for such degrees is likely to stimulate additional growth in LLM and other Master's programs that offer further learning for JD holders as well as other "intermediate" legal degrees (e.g. for people engaged in particular areas of policy or administration such as health care or the environment).

Best Practices or Collected Practices and Recommendations?

This working paper explores five distinct domains of challenge: i) educational theory and technological resources; ii) administration of distance learning programs, iii) technology training and management; iv) intellectual property; and v) business and financial models. This paper represents more of a starting point than a set of conclusions on the issues facing legal distance learning. Its goals are three-fold:

1. To define and summarize current topics and practices in legal distance learning;

2. To identify areas that need best practices developed, and, to the extent possible, describe current recommended practices; and

3. To identify areas that need further attention, research, or development by the legal distance learning community.

The field of distance education in law is still young, so it is hard to make authoritative pronouncements about best practices. In such a quickly changing landscape, today's "best practices" may become tomorrow's stultifying restraints. Nonetheless, our Working Group has experienced a number of common challenges. In this paper we outline both some good solutions and some approaches that are best avoided. The Working Group has already developed a model policy for law schools adopting distance learning in their curriculum. That policy, included as Appendix E, incorporates many of the best practices.

Education Theory, Technology Resources, and Teaching Techniques

Online education provides a new lens through which to explore learning theory and pedagogy. We leave aside the debate about "learning styles" research because it is obvious that both traditional in-person and distance learning legal education can and should address students' learning styles. We focus on three important overarching learning theories—behaviorism, cognitivism, and constructivism—that are all represented in online legal education, with the dominant modality seeming to be constructivism.[13]

Behaviorism is unconcerned with the travails and processes of the learner's inner mind; how we learn is unimportant so long as the actions that result are those we desire. We see behaviorism in the subtle acculturation that occurs in the first year of law school, as students begin their long road to professional formation by standing and answering the professor in class (whether in person or via technology.)

Cognitivism addresses the collection and retrieval of information, rather like a computer. Law school certainly requires students to memorize a large body of black letter law, rules, and judicial interpretations.

[13] R. Mason & F. Rennie, E-Learning and Social Networking Handbook: Resources for Higher Education (2008)

Whether the exam is on paper or online, the student must demonstrate adequate memory and recall to establish competence in cognition.

Constructivism describes learning through experience and reflection. That is, for each experience, a learner constructs a meaning, and that meaning guides the learner's experience of future situations, especially those that are similar. In this way, knowledge is the learner's collection of interpreted experiences. We see constructivism in the practice and application of experiences that are so much a part of online courses, and increasingly of in-person courses, too.

The dominant model of legal education since Langdell has, in fact, been a combination of these methods, with constructivism at its core. Dialectic is the way most law teachers today were trained. By participating in the Socratic Method, students develop the skills and habits of cognition and analysis—sometimes called "thinking like a lawyer"—to absorb the body of legal knowledge required for competency. In this way students learn how to behave like lawyers in the courtroom. Professors shape students' experience of classroom interaction, including both the experience of being called upon and the sometimes painful experience of observing others being "grilled. In this way, the "case method" of teaching through dialectic is highly "constructivist." It provides formative experiences that students then reflect upon. These reflections are influenced by the faculty, and learning is derived from the meaning that students attach to the experience. The Socratic Method does some good and some bad in the formation of new lawyers: it contributes by training analytical habits of mind, but it also causes confusion and frustration.

Online learning employing synchronous teaching and the Socratic Method delivers a nearly identical learning experience, including the subtle feedback from the professor that guides student interpretations and meaning. Live video of the professor and student are commonplace, but even text-based interfaces can produce much of the same experience if carefully and thoughtfully managed.

Yet there is more to legal education than just the Socratic Method, both in the classroom and online. Schools today employ a rich and diverse palette of learning experiences to bring students the learning opportunities they need. Increasingly, in-person courses have asynchronous online teaching components. And increasingly, online learning employs live interactions between students and faculty. The palette is beginning to look the same in-person and online; developments like "flipping the classroom" take the in-person world closer to distance education, and live synchronous learning takes the online world closer to the physical classroom. There is little reason to draw bright lines today, and there will be even less reason as more and better teaching technologies become available at commodity prices.

Experiential education is gaining attention in law, and it, too, is constructivist. John Dewey (1859 –1952), considered one of the greatest education theorists of the twentieth century and one of its most astute commentators, saw, in his long life, both great expansions of knowledge and great turmoil in educational practices. His work and writing is practical, accessible, and downright trendy, even sixty years after his death: "[Successful teach methods] give the pupils something to do, not something to learn; and the doing is of such a nature as to demand thinking, or the intentional noting of connections; learning naturally results."[14]

[14] John Dewey, *Democracy and Education*, *reprinted in* 9 John Dewey: The Middle Works, 1899-1924 (Jo Ann Boydston, ed. 2008) at 161.

Teaching and learning online embraces *practice* as essential to learning. Online curriculum design asks how practice can reinforce and solidify knowledge transferred by other means (readings, viewing lectures, observing experts in practice, etc.) as well as teach it directly through the application of that knowledge. Students are challenged with application examples to work through, and in so doing build a knowledge base much greater than that gained solely from lecture or the case method. Socratic dialectic is clearly good practice for the students called upon, and also for all those in the class thinking, "I would answer it this way…" Yet it leaves gaps; learning to analyze appellate opinions does not, alone, teach one how to write a complaint or argue persuasively for child custody. Something else must be added. Experiential learning fulfills this need.[15] The best distance learning is highly experiential and practice-oriented, just as great in-person teaching can be.

Many Web 2.0 tools support an active process of constructing knowledge rather than acquiring it; such instruction leads to construction rather than just communication of knowledge.[16] Some authors suggest that modern online tools should go beyond simply allowing students to construct knowledge, but actually provide "education" by allowing students to access increasingly abundant and evolving knowledge.[17] Siemens calls this new learning *connectivism*. According to this approach, learning is a process of connecting specialized nodes or information sources, nurturing and maintaining connections to evaluate and acquire new knowledge, and developing skills; "Choosing what to learn and the meaning of incoming information is seen through the lens of shifting reality"[18] Increasingly, "big data" techniques show us that new knowledge is imbedded in previously unseen connections between and among disparate data points. Legal education and the profession of law have barely begun to appreciate and apply these techniques.

These new trends are particularly challenging for law schools, which largely still operate on the knowledge-acquisition and dispersion paradigm. The very tools that provide the ability for constructivist or connectivist online classrooms can seem unwieldy or cumbersome in the hands of traditional education. Any examination of online tools should appreciate the context in which they may be best applied, and that this context may radically differ from the models law schools traditionally prefer. The descriptions of online tools and discussions of practices herein are intended as an introductory examination for educators beginning to explore distance-learning opportunities. We are well aware that they are examples, and not exhaustive, and prone to rapid obsolescence. The tools and practices represent the collected experiences of the Working Group, and where recommended practices are provided, the Group's sense of how best to *presently* balance competing budget, technical, curricular, and academic concerns in implementing distance education in the law school context. But stay tuned…

15 See, David Thomson, *Defining Experiential Legal Education* for a review of how experiential learning began in law schools, a proposed definition of experiential legal education, and examples of experiential education transforming instruction in some law school courses.

[16] See also TM. Duffy & DJ Cunningham, *Constructivism: Implications for the design and delivery of Instruction*, in Handbook of Research for Educational Communications and Technology 1236 (D.H. Jonassen, 1996) (arguing that students should be empowered to learn rather than passively educated).
[17] Mason and Rennie, *id*.
[18] Quoted in Zane L. Berge & Lin Muilenburg, Handbook of Mobile Learning 169 (2013).

CHAPTER 2

Delivery Mechanism

This discussion will focus on the models for delivering distance education. The delivery model discussion can lead to partisanship between those advocating the "synchronous" model, which more closely resembles traditional, in-class instruction, and those advocating the "asynchronous" approach, which untethers the pedagogy from the necessities of being "all together" with an instructor at the same time. In reality, both approaches have strengths and challenges, and in practice are often blended into a "hybrid" approach. The key feature of good distance instruction is designing pedagogy that can effectively use the medium to help students achieve superior educational outcomes, and no particular methodology has a monopoly on this approach.

This chapter addresses:

- *Delivery models: synchronous and asynchronous*. What are the strengths and operational considerations of offering synchronous and asynchronous education?
- *Comparative Pedagogy*: How do pedagogical practices differ between distance learning and residential programs? How do synchronous and asynchronous pedagogy differ and complement one another?
- *Hybrid or blended learning*. How can distance learning and in-person teaching techniques or tools be deployed in concert to produce better student outcomes?
- *Staffing for distance learning program design*. How do the design and delivery of online courses differ from residential course development and teaching? What particular personnel and skill sets are required to launch and maintain an online program?

Delivery Models: Synchronous Model

Synchronous distance learning occurs at a given time, while participants occupy different spaces. Experimented with by schools since the 1970s invention of interactive television, new technological advances make the development of live, real-time interaction between faculty and students useful and exciting. Free platforms like Skype and Google Hangouts as well as a growing number of well-designed cloud-based and generally affordable proprietary video conferencing systems give faculty and students the ability to interact in ways similar to a live, classroom space. A host of sophisticated virtual teaching platforms have also begun to emerge, at varying price levels, but few are much cheaper than earlier custom developed options.[19] Proprietary systems add valuable online classroom components, such as presentation slides, screen sharing, digital whiteboards, quizzes, polling, shared documents, chat windows, recorded "lecture capture" and multiple breakout rooms for small group work. The invention of

[19] These include Blackboard Collaborate, Adobe Connect, Cisco WebEx, Vidyo, Zoom, Vantage Point and Kaplan's Indigo.

high definition systems delivered via high-speed internet has all but eliminated the inconvenience, expense, time delay, fuzzy video and poor audio quality of earlier systems, and with cheaper and more ubiquitous bandwidth, the technology will only continue to improve.

Strengths of Synchronous

Synchronous systems can connect faculty, students, and other participants from around the globe, in real time, with multipoint audio and video. This live, interactive exchange among participants parallels the traditional law school classroom, making it easier for instructors to make the transition to online teaching in this model. Current technologies are often so good that subtle interactions (e.g., the confused expression on a student's face) can be engaged immediately. For example, the Socratic Method can be retained under the synchronous model, as can other types of instruction (e.g., moot courts, client counseling exercises, etc.). In addition, a synchronous classroom may include various "bonus" features not found in a traditional classroom without additional technology investment. For example, breakout groups can be assembled instantaneously with students brought back to present their work to the main group with little or no time wasted.

Operational Considerations for Online Synchronous Education

While technological advances have made synchronous education possible and easier to set-up and maintain, these systems still require some level of technical user competence and support. Additionally, there are subtle differences between a live class and an online experience that must be attended to (e.g., which way is the camera pointing? Are all the students present?). In some respects, the instructor's transition from the traditional classroom to the virtual classroom is analogous to the actor's transition from the stage to television. There are also significant technological considerations that must be managed and accounted for, and appropriate training and tools for both faculty and students are essential.

Delivery Models: Asynchronous Model

Asynchronous online education is characterized as work that can be done with a great deal of time flexibility: material is not presented live, and it can be accessed at any time of day or night. There is a wide variety of tools that can be employed in asynchronous systems. These range from simple chat boards and materials portals (e.g., YouTube) to sophisticated multi-participant venues developed for intricate discussion and knowledge assimilation (e.g., discussion boards and wikis).

Strengths of asynchronous online education

Asynchronous education provides one notable strength: it allows students the flexibility to access educational resources at times convenient to them. In this respect, asynchronous online educational models are often more accessible than traditional programs to working professionals, people with life responsibilities beyond their educational pursuits, and individuals in distant geographic areas. Unlike high quality synchronous programs that require relatively advanced standards of technology and connectivity, schools can design asynchronous programs for low-connectivity areas and inexpensive computing resources, further extending the reach of the educational opportunity. Furthermore, asynchronous models often have better learning outcomes for non-native English speakers, because they provide greater opportunity to replay materials, assimilate and process materials, and edit responses.

It is important to note that asynchronous programs are not passive programs, nor are they self-paced programs. Most schools with developed asynchronous programs report high interactivity and often very

short deadlines for activities and assignments. While students may be able to do the work at a time convenient for them given their employment and life schedule and time zone, often work must be completed regularly and on a short turn-around time. For example, a 24-hour deadline for a paper, post, or response is not uncommon.

Operational Considerations for Online Asynchronous Education

Synchronous online education plays on old methods - classroom presentations by faculty members - and therefore holds known challenges: some faculty members provide a good classroom experience, and some do not. Similarly, the quality of asynchronous online education can vary widely. The design is critical to a successful program; a poorly designed and executed asynchronous class can be just as dreadful as a poorly taught lecture class. As a result, careful attention to design and detail is critical from the outset, and must be maintained diligently over the execution of an offering. And unlike synchronous courses, a best practice for asynchronous courses is to complete design of the full online course content before the class starts for a given term. Finally, because even careful asynchronous education can, if poorly administered, become a passive learning experience, course designers and faculty should pay particular attention to inserting interactive opportunities into each asynchronous class.

Comparing Synchronous and Asynchronous Pedagogy

While synchronous education often mimics traditional classroom-based education, high-quality asynchronous education must actively pursue different pedagogical modes, particularly those that foster and demand interactivity. Asynchronous education should be designed on a student-centered model of teaching, where learning objectives for each assignment are presented to course participants. Goals-based, measurable, assessable, and interactive assignments are vital to prevent asynchronous classes from becoming passive correspondence courses.

Interactivity, often in short windows, also supplants the sense of isolation that asynchronous classes sometimes create. Interestingly, for some students, interactive asynchronous classrooms can be more successful than synchronous ones, where verbally quick students often do better than others. In an asynchronous environment, students who are more contemplative or have different learning styles can produce work in the manner best suited to each individual. And, because time is effectively unlimited (i.e., there is not a single 45 or 90 minute live class, but everyone working on their own in their own time zones), all class members may—and are expected to—participate in discussions and interactive events.

As some researchers note, “there’s no back of the class”—no student can skip class, fail to interact, or sit in a discussion and let classmates carry the day. As a result, pedagogical methods must anticipate the time required for full participation, and structure assignments that allow for thoughtful and thorough participation and assessment by all students and faculty.

Another aspect of the asynchronous course is that it enables the course participants to engage with the online materials and class forums at times of their own choosing, which will often take place during evenings or on weekends. Deadlines for forum participation and assignments should take this into account in course construction.

One common trap new online instructors and program designers discover is the temptation and excitement of new online tools. While the number of technological tools proliferates, and increasingly novel approaches are introduced, instructors can be enticed to use technology for technology's sake. Focus should always remain on using the best tool to achieve designated learning outcomes.

The course syllabus should outline the full range of course requirements, including quizzes, writings, online discussions, and deadlines. In addition, the applicable requirements should be set forth in each course module. There should also be a system for multiple assessments during the course. The class syllabus should note these assessments, as well as a policy for the students to be able to access the evaluation of their performance. The course instructor should also post specific times for faculty-student online or face-to-face "office hours" for student questions and discussions of the course materials and projects.

One result of this participation is that faculty experience the full variety of students in their class. In a live class, typically the most outgoing and verbal students are well known by the professor, but in an asynchronous classroom all voices are heard. This has surprising positive and negative aspects. On the positive side, faculty hear from students who are hesitant to speak in class. Often this favors thoughtful, thorough, and shy students who use careful contemplation to generate excellent written responses.

On the other hand, weaker students, who often can sit anonymously through live classes—and who produce poor and anonymous final exams in the traditional law school class—are suddenly exposed. Faculty who teach in asynchronous classes for the first time often express surprise at the range of students and dismay at the weaker students' submissions. It is worth noting that there is often little difference in the overall quality of the students enrolled, but the asynchronous environment can expose weaknesses and strengths in more specific detail than most live, time-limited classes. To the positive, however, thorough and thoughtful instructors will relish the opportunity to identify weaker students and work with them to shore up these students' skills.

Most importantly, a well-designed course aids the students who are having the most difficulty, by: (1) identifying these students early, (2) providing interactive elements to enhance students' learning, (3) giving timely, iterative feedback, and (4) allowing students to participate in online discussion forums, which are discussed in chapter 3.

When designing online curriculums, whether synchronous, asynchronous, or blended, care should be taken to ensure that the learning tools employed can be delivered to the intended audience. To ensure a quality user experience, courses directed toward particular populations—for example, persons living in remote areas, deployed military personnel, socio-economically disadvantaged people, and similar populations—should avoid the use of bandwidth-heavy learning tools such as live streaming video. This may restrict the range of available learning tools, or require creativity in overcoming the limited bandwidth and speed on the user end of the delivery (even though the school or faculty capacity may be sufficient).

Hybrid or Blended Learning

While this paper identifies two distinct modes of online education delivery—synchronous and asynchronous—in truth, programs often adopt an approach that uses elements of each. Many largely synchronous programs also include discussion forums or other asynchronous assignments; many largely asynchronous programs will hold live classes or chats to help students work through information or share projects.

The Working Group suggests using the separate discussions in this paper to more thoroughly understand and explain these modalities, but when designing curriculum and programs, be open to blending these modalities. Hybrid or blended programs are increasingly the norm, and early research in other fields suggests that adding asynchronous elements to traditional live instruction improves learning efficacy.[20] Thus hybrid learning may emerge as a best practice when part of an effective, conscious design strategy for courses and programs.

One school structured a hybrid JD program that requires live, in-person instruction for one week at the start and end of the year (synchronous). The program emphasizes largely or wholly asynchronous learning activities throughout the remainder of the term. Others include live online classes as core components of the design in its online courses, comprising as many or almost as many hours of instruction as might be delivered in a live, in-person setting. Still others include some asynchronous components in live, in-person instruction, a technique that has come to be known as "flipping the classroom"—engaging students in asynchronous content delivery so that in-class discussions can be more advanced and in-class activities can focus on application of knowledge and demonstration of skills.

Staffing for Distance Learning Program Design

Online course development and delivery can require a staffing model different from what law schools have traditionally used. In particular, it may be necessary to engage an instructional designer and to increase technology support for online courses.

Most residential courses are "designed" by a single professor. That professor sifts through material, determines the order of presentation, develops a syllabus, and delivers the course to a class. In online classes, a team approach is valuable. As noted in the section on synchronous programs above, at a

[20] In a 2010 metastudy commissioned by the Department of Education, researchers examined more than 1000 studies of online and blended learning conducted and published from 1996 through mid-2008. U.S. Department of Education, Evaluation of Evidence-Based Practices in Online Learning (2010), *available at* https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf**.** The study, which included mostly adult learners, concluded that, overall, students in classes taught strictly through live, face-to-face instruction performed less well than either students in wholly online learning settings or students in blended or hybrid learning settings. Analysts noted that blended conditions often included additional learning time and instructional elements not received by students in control conditions. This finding suggests that the positive effects associated with blended learning should not be attributed to the media, per se. For a summary of studies on blended learning, see "Blended Learning Research: The Seven Studies You Need to Know" Davis, M. *Education Week*, April 13, 2015.

minimum, practitioners suggest that a live class always be accompanied by technical support. Asynchronous offerings, which are usually highly designed as courses before they are delivered as classes, typically require four types of expertise.

Content expert

Sometimes called the Subject Matter Expert or SME, the content expert is the person who identifies the important information that students must learn and the skills they must acquire to successfully accomplish the educational goals of the course. The content expert must separate the information that will be delivered from the delivery method used in a residential course, and work with the instructional design team to deliver that content in new ways to online communities. The content expert may, but does not always, also teach the course. In fact, well-designed courses may be taught many times by multiple instructors. A content expert developing a course must consider a variety of potential instructors as she develops material.

Instructional designers

Instructional designers are specialists in the design and delivery of online educational experiences. Focusing both on appropriate pedagogical design of learning and outcome-based assessments, and on the design of individual elements of online teaching, instructional designers make sure that the asynchronous environment provides all the tools and interactive experiences students need to accomplish the goals set by the content expert. Instructional designers are often trained to design materials that comply with the accessibility requirements of the Americans with Disabilities Act (ADA). These designers may also be able to assist schools with FERPA compliance for grade and record protection and management.

Course instructor

The course instructor is the person who delivers and supervises a single offering of the synchronous or asynchronous class. Due to the highly developed structure of online courses, course instructors must commit to delivering the course as written or risk impairing the integrity of the course design. Course instructors have less instructional autonomy in this venue than they may be accustomed to. The course instructor may be regular faculty or hired on an adjunct status, and may serve as the content expert for the course.

Technology support

In synchronous settings, both instructors and students use tools that can suffer disruptions. Instructors should not be responsible for both conducting a live class and managing technology, particularly if that means resolving individual student concerns. The gold standard is having a separate technologist available to all members of a live class for the duration of a session, but variations appropriate to the setting can also work. In an asynchronous class, where students may be accessing the class in the middle of the workday or the middle of the night, providing technological support is important. Several commercial services and some schools with dedicated distance learning facilities provide 24/7 online and phone support for asynchronous classes. These services can address technological troubles whenever students or faculty encounter them. Schools working with asynchronous programs report that using such a service is an indispensable part of conducting a successful program. Additionally, technology support professionals should be trained to troubleshoot the particular technology used in the online courses.

An instructional designer can be contracted to develop particular courses, or hired as an employee of the law school. Some universities employ whole centers for teaching and learning, and it has become customary for those centers to include one or more instructional designers. Alternatively, third-party contractors who provide distance learning marketing, enrollment, and retention services may also provide instructional design as part of a bundle of services. Such employment arrangements are often dictated by the scope of the distance education offerings.

Recommended Practices Summary

When developing an online program, administrators should carefully consider which delivery mechanisms will be used, the impact on current staff, and whether additional staff will be required.

1. *Delivery mechanisms*. Online programs can deploy an array of synchronous and asynchronous methodologies to deliver content and encourage engagement. Program developers should understand pedagogical and technological implications of different modes of delivery.

2. *Online pedagogy.* Online distance learning pedagogy requires conscious design. Courses should employ an appropriate mix of resources and tools, particularly as it relates to learning activities directed towards identified outcomes.

3. *Content development and staffing.* Course developers, including both content experts and instructional designers, should design online courses to be tied to measurable outcomes, using a variety of pedagogical tools to be taught by a variety of instructors. Teaching and technical staff departments should be appropriately staffed to provide feedback and technical assistance when students access courses, whether synchronous or asynchronous.

Chapter 3

Instructional Technology Tools

The particular online tools used to deliver distance courses can be incorporated into teaching to achieve a variety of goals from course management to enhancing knowledge acquisition. Depending on the application, technology tools can be used to encourage group collaboration, provide active engagement, present immediate feedback, and prepare students for their future in a digital world.

The tools described in this chapter describe just some of the current tools available to online instructors and programs. This is not an exhaustive list, and it is not intended to dictate the best tools for any one particular pedagogical or program goal. The best use of all tools will be dictated by the pedagogical decisions critical to program design and success.

This chapter addresses:

- *Learning management systems*. Proprietary or open-source learning management systems collect online teaching tools in one place; some schools collect individual tools and assemble their own technology teaching toolset. What should a school consider in choosing an approach?
- *Webcasts and video feeds.* How can a program best use video, either live webcasts or recorded videos, to deliver content and engage students?
- *Podcasts and voice-over-slides.* How can a program deploy recorded audio (podcasts) and voice-over technology (voice-over slides) to effectively present information?
- *Chats and blogs.* How can more informal means of interactions such as chats and blogs be used effectively to encourage student engagement in distance courses?
- *Quizzes.* How can quizzes be used effectively to check and assess learning?
- *Discussions.* How can discussions be used as robust interactive elements of courses to develop learning and enhance interaction among faculty and students?
- *Wikis.* How can group projects and co-produced works enhance learning for individual students?

Learning Management Systems

A wide variety of individual tools can be used to embody and deliver the course. These tools are typically housed together in a single online platform called a Learning Management System (LMS). Some schools use free online resources or cobble together various tools to produce online classes (e.g., using Google Docs and other collaborative tools), while most higher education organizations employ a proprietary or open source LMS (e.g., Blackboard, Moodle, Brightspace, Canvas, or Sakai). Still other schools use

existing resources as a bridge to online learning (e.g., Westlaw's TWEN system or CALI's Classcaster). Most use some form of LMS as a contained classroom for their students.[21]

Online instructors can use a host of specific tools described later in this chapter. A strong LMS will provide these tools in a packaged online classroom.

A few tools vital to best practices are not available in free or add-on programs. Of particular note, robust gradebook tools are available in well-developed learning management systems. These tools allow faculty to provide feedback on individual assignments using grading rubrics, and to give other specific feedback to enhance student achievement and success. Learning Management Systems, whether propriety or developed in-house, should provide data that can be used to track student and faculty involvement in the course.

Most tools can be used for two distinct purposes. First, they can be used to convey information and to provide interaction between faculty and students and among students. Second, many of these tools can be used to facilitate student collaboration, both for the purposes of assessment (e.g., graded group projects) and for students to study together. Collaboration is a key skill that the legal profession increasingly recognizes as a core competency of professional attorneys.

Most schools offering distance education establish technology requirements for students. Requirements typically include minimum computer specifications, access to reliable internet connections, and required software. Establishing requirements up front ensures that students are not hampered by inadequate technology and are able to focus on coursework without the distractions of technical issues. Importantly, when schools require rather than recommend particular technical capability, the cost of those requirements can become a part of the student's financial aid package.

Whether using a proprietary LMS, a managed open-source solution, or other technologies, the bricks-and-mortar costs can be minimal. While some schools host their own online courses on residential servers, law schools and universities increasingly choose to house programs in the cloud, where computing capacity is greatly increased for multiple-user access, and update costs are minimal. Similarly, costs for individual participants are not substantial: a standard laptop or PC, coupled with standard browsers and other software, is typically sufficient for both faculty and students.

In addition to deciding which platform a school will use, and how to host and support that platform, schools should consider what devices students will use to access course content. With many mobile devices on the market today, including tablets and smartphones, students may attempt to access online material in a form their device does not support. For example, Apple products such as iPads and iPhones do not support Adobe Flash Player, a common animation and web page software. Similarly, many students working in an asynchronous environment will want to access information on their smartphones. While some proprietary learning management systems have created specific mobile-compatible features,

[21] This discussion of Learning Management Systems, and other references to particular products is not intended to be exclusive or exhaustive, nor does this paper endorse any particular product or approach beyond the standards articulated in our recommended practices. For a comprehensive list of current technologies and information on the state of the distance learning industry, please see the Online Learning Consortium (formerly the Sloan Consortium) at http://online learningconsortium.org.

others have not. Accommodating these differences may involve separating audio and video feeds, reducing or limiting graphics, changing the look of a website when an LMS is accessed by a mobile device, and other technological workarounds. Whether, and to what degree, an institution will support mobile device course access is an individual decision. However, the proliferation of these devices demands that institutions pay attention to how students are using them.

Webcasts and Synchronous Video

The primary method for synchronous online education involves a live instructor providing a lecture or guided discussion through a web-based broadcast. The webcast is then presented in a way that can be watched on devices at a distance. Webcasts can be developed for three specific audiences:

Site-to-site
Some webcasts, particularly dedicated web conferencing systems, link two or more specific sites through an internet connection.

Closed Broadcast
Webcasts are broadly available, but can be accessed only by someone who has a password or other method of entry.

Open Broadcast
Public webcasts are posted on sites that can be visited by anyone, whether enrolled in the course or not.

The mix of audio and visual streams in a webcast can be controlled to meet both pedagogical goals and technological limitations. The use of visual and audio resources should be considered separately in the design of webcast programs.

Visual Two-way vs. Visual One-way
In some systems, faculty can see students and students can see faculty. In other systems, students can see faculty, but faculty cannot see students. One-way visual technology is easier to maintain and stream.

Audio Two-way vs. Visual One-way
In a simple one-way audio channel, students can hear a professor speak but cannot talk back. In other systems, students can both listen to the professor and engage in conversation. Note that visual and audio channels need not be linked; in some cases, the visual feed will be a one-way feed from the faculty member, but with a two-way audio channel so students can ask questions. Mixing these tools to accommodate the institution's particular needs and technical capabilities can improve both the delivery of information and the possibility of interactive exchange.

Synchronous webcasts should be designed with accessibility in mind. At a minimum, the face and voice of speakers should be clear, and any visuals used in a simultaneous webcast should be easy to see and access. In this context, the quality currently provided by Skype is probably insufficient for anything other than the occasional use in exigent circumstances; however, screen-sharing functions in Skype are making this option more attractive. Platforms that provide strong bandwidth and connectivity (e.g., Cisco products, Fuse, etc.) can be expensive and are not necessarily compatible with other systems. Webcasts

with interactive features (i.e., the ability of students to interact, either via video or other means) should ensure that transmission speed is sufficient for interactive elements to occur in real time with minimal delay. Most practitioners note that synchronous interactivity allows faculty to see participants as well as for participants to see the faculty member. The faculty therefore need enough control over the incoming student feeds to allow audio sharing across the entire class. Faculty also report that the ability to see participants' faces—either all participants during a synchronous session or at least the face of a person asking or answering a question—enhances the instructor's ability to deliver a dynamic synchronous class. In many cases, technology can provide a better view of a student's reactions than a large lecture hall can afford. While not yet defined as a best practice, we recommend schools with synchronous classes seek some means to achieve the "eyeball view" of the class.

The introduction of distance learning modalities, particularly in blended learning settings, has caused some schools to rethink their use and arrangement of bricks-and-mortar facilities. For example, one law school introduced a significant online component to the traditional client counseling and interviewing class. Students participated in online synchronous small groups, and one-on-one interviewing and counseling exercises with faculty and alumni volunteers. However, students found it difficult to find appropriate spaces on campus to conduct such interviews: carrels in the library were not appropriate places for a student to conduct a video chat, nor were there other semi-isolated and distraction-free settings available. During a planned library renovation, the school retrofit one room into several very small conference rooms suitable for a student to conduct an online video chat without disturbing other library patrons.

Synchronous classrooms can and often do go beyond simply the one- or two-way video stream. A live video feed of the professor plus a simultaneous display of slides or other material can enhance the live experience. In addition, synchronous classes often have a third "conversation stream" flowing during the course: a Twitter feed or other live backchannel conversation can occur while the faculty conducts the live class. As one professor has noted, "Students these days have split attention spans. If they're going to be looking at several screens at the same time, I want all of those screens to be about my class." In the synchronous space, providing more than one live information stream can actually enhance attention among students accustomed to multitasking.

Regardless of the platform, the law school must take responsibility for ensuring that all participants have sufficient software, bridging systems, and connectivity options to participate in synchronous environments. Average student consumers should not be responsible for ensuring their own connectivity, given the complexity of bridging systems, software plugins, and so forth. At a minimum, schools should provide students with technological specifications, software, appropriate plugins, and a testing phase before the class begins to ensure the student can access the synchronous platform. As noted elsewhere, in-person support during class should also be provided.

While web-based consumer products like Skype and Google Hangouts may be insufficient platforms for a synchronous class, they can serve as good student-to-student interactive platforms, as one-on-one and office hour tools, or for other short term or limited audience interactions. But several administrative concerns about such platforms should be considered before they are integrated into a program. First, many of these platforms may not be sufficiently secure to meet federal privacy requirements. Second, it is difficult to track interactivity across multiple platforms. The ABA requires minimum interactivity time, or "seat time" for courses, which can be easily tracked by an institution's primary delivery source. Once a class begins mixing multiple tools, tracking interactivity time becomes more challenging.

Asynchronous Video Recordings

Unlike live webcasts, video recordings allow students to access a prerecorded video at any time. It is not possible to use an interactive link within prerecorded video, although interactive elements can be used in conjunction with static video presentations for analysis and discussion.

Students use video recordings differently than they use live webcasts in two important ways. One of the many benefits for students is the opportunity to view videos multiple times, thereby providing them the opportunity to revisit particular points over and over until they understand a complex topic or particular nuance. Given that students have the opportunity to replay specific segments, the information presented in a video recording must be presented clearly, carefully, and with a greater degree of accuracy than might be demanded by a live webcast. Many course developers believe that this means videos should be carefully scripted, with scripts developed for presentation before shooting. Presenters must speak precisely and carefully.

As with live webcasts, good video recordings must be produced with sufficient quality and clarity that speakers are both easily seen and easily heard. High quality video typically requires professional equipment, engineers, and editors. Delivery of high quality video to individual users can require high bandwidth. Some practitioners recommend using a source outside the school's hosting capacity, like a private channel on YouTube, to host video links for such material. Schools should develop both a method for dealing with the storage and protection of such files as well as a means of ensuring that participants have sufficient bandwidth to download and view videos.

Schools using video links and materials should take careful note of two technical issues. First, most video will need some level of postproduction review to meet adequate quality standards. Ensuring that both time and staff are available to edit and produce video is key to ensuring quality material. Second, to meet accessibility standards, postproduction processes should include the production of a written transcript of all asynchronous video and audio material. Transcripts should be posted alongside all video recordings for students who may have special needs as well as for students who want to review the material.[22]

A large consensus of distance learning providers agree that video presentations should be "chunked" or broken into short segments, each of which is easily identified

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[22] See Chapter 5, *Student Orientation, Students Services, and Computer Access*, for further information on student accommodations. See Chapter 10, *Accreditation and Regulation*, for further information on regulatory requirements for online student access and accommodation.

and repeatable. This segmentation of videos and material allows students to easily access and review specific content on demand. In most subject areas, 5-7 minute videos are considered ideal. Where topics are too complex to explain in a 5-minute segment, videos should be as short as possible, if only to assist students in searching for particular topics. Thus, a 2-hour lecture may be broken into multiple ten or fifteen-minute segments, each labeled for particular content. To accommodate students with a variety of needs, and to support regular students working through difficult concepts, it is strongly suggested that all videos posted for student use be accompanied by a written transcript.

Podcasts

Podcasts are audio-only, prerecorded sessions of one or more speakers. Podcasts have been used by radio journalists for years and are easily recorded on most handheld devices and mobile telephones.

Audio files should be clear and easy to hear. Many schools embed podcasts within their courses, playable as streaming audio from within the learning management system. Where this is the case, providing a separate file in a downloadable format will allow students to download a podcast to a separate audio player device to play the podcast in other environments. As with static videos, students will often replay portions of the audio file several times to master particular content and ideas, so material presented should be carefully worded and of sufficient quality that the speaker can be heard with clarity on a variety of audio players.

As with prerecorded videos, all podcasts posted as part of an online learning experience should be accompanied by a transcript to accommodate student needs and learning styles.

Student preferences for podcasts have changed in recent years. Many students are now familiar with well-produced podcasts and expect the evocativeness and pace of a professionally produced piece. A single voice, delivering an hour-long message, can be dry and disappointing to those accustomed to a more engaging audio presentation. Schools can manage this expectation in two ways: First, instead of a single-voice audio lecture, consider a two-voice interview style, particularly where leading questions can cue important information. Second, and particularly where a single voice presents, podcasts, like videos, are best developed in small "chunks" of 5-7 minutes to help students access information in digestible and reviewable pieces.

Voice Over Slides

Another way to deliver information, either live or recorded, is to provide a Voice-Over PowerPoint presentation (more generally, Voice-Over Slides, or VOS). Requiring less bandwidth than a video, this presentation can be automatically chunked into short individual mini-lectures or lessons corresponding with slides. Not only can VOS presentations provide both audio and visual cues for a presentation, but, coupled with a transcript, can provide a valuable point-by-point resource for students dealing with difficult material. Similarly, all visual images should be encoded so they can be read by virtual reading

programs and screen readers for the visually impaired.[23] Generally VOS presentations can be produced with less support personnel than other more intensive production methods (e.g., video shoots).

Many faculty create and use slides in residential classes, so adding voice-over audio files can be an easy early adjustment to developing online teaching tools. Moreover, developing VOS presentations can be an easy entry point for faculty learning the pedagogical principles of online teaching, particularly when translating learning objectives into specific, assessable student tasks.

Live Dialog ("Chats")

A live chat can be conducted in video, audio, or text-only format. Chats are a platform in which two or more students interact with the professor or with each other, thereby expanding beyond the one-to-one interaction of an individual tutoring session. An open chat runs something like a conference call, where all participants have equal access to speak.

An open dialog via audio can work well for small groups: either one member (the professor) leads the audio stream and allows others to speak at specific intervals, or all members of the group discuss specific ideas in any format the group agrees is sensible. The challenge with open chats is the propensity for many voices to talk over one another, muddling the audio channel.

A moderated chat allows one person to have primary control over the audio stream. Individuals participate in the chat by indicating their interest in speaking (participants "raise a hand" by signaling the moderator to turn on a particular participant's audio channel) or allow textual comments to be submitted in side channels (e.g., a text box on a web page that accompanies the call where students post questions for the moderator or professor to answer).

A chat's relative importance in the curriculum should be carefully communicated to students in the course grading criteria. For example, where a chat is used as supplement to other online interactions, (rather than as a primary interaction), students need to know whether their comments will count toward their grades. Some students will expect that a comment posted in a chat counts as demonstration of their understanding of the material and will expect to be given credit unless specifically directed otherwise.

Video

Video chats, not unlike live video webcasts, allow students and professors to see one another. Depending upon the technology, students may also be able to see each other. Video chats can be run with open audio channels in which everyone who is visible can also speak and be heard by all participants, or like a

[23] See Chapter 5, Student Orientation, Students Services, and Computer Access, for further information on student accommodations. See Chapter 10, Accreditation and Regulation, for further information on regulatory requirements for online student access and accommodation.

moderated chat with turn-taking access to audio. Some commercial ventures, such as Google Hangouts, allow participants to toggle between participants as speakers.

Audio

An audio chat can be run either as an audio-only feed akin to a conference call, or as an audio feed over a manipulated video feed. For example, some audio chats run through a computer-modulated space where the faculty can present static or manipulated PowerPoint or white board exercises. As students ask questions, the professor can type out examples, manipulate data, or demonstrate materials.

Text

Interestingly, many students prefer text-only chat forums. Indeed, they remain popular because the technologies are well developed and the bandwidth requirements are relatively low. Shy students, in particular, can thrive in the relative anonymity of text-only forums.

Voice-to-text

Technologies that render spoken word to text, or text to spoken word, are rapidly evolving. Most famously, the iPhone's Siri can transcribe audio to text and convert text to audio. While a few programs are currently available and used to enhance accessibility, the Working Group feels that this technology still must mature a bit before it can be recommended as a teaching tool. At the rate of current technological advancement, voice-to-text and text-to-voice technology will likely be available as an important teaching tool in the near future.

Blogs: "Social Space"

Blogs are web sites containing user-generated content, typically developed in the form of an online journal. Individuals can share news, events, knowledge, or ideas, and disseminate those ideas widely to others. Readers can provide feedback through a comment feature, to which the original author can respond. In educational settings, blogs may be used in several ways. Two of the most productive include:

Information Dissemination

Information dissemination includes, by example, faculty lectures followed by student comments, questions, and feedback.

Journals and Student Reflections with Faculty Response

Many schools use the blog feature as a journal-keeping exercise during externships. Faculty may respond using closed or open comments. Students may also keep blogs on particular subjects and receive comments from others. For example, each student might follow a case or event.

Vlogging

Like regular written blogs, students can submit video blogs, sometimes called *vlogs*. These often are simply video commentaries, but can sometimes be more substantively produced video excerpts. Faculty and students may then submit written comments on the student's video.

Blog content should be clearly related to course objectives and targeted to those objectives. Setting formative or graded assessments that require students to post

specific information, read and comment on each other's posts, or provide other feedback, will encourage productive blog use.

Online Quizzes

A variety of online quiz tools allow faculty to present anything from a short multiple-choice quiz to a highly complex assessment, depending on the nature of the learning management system.

Quizzes can be used for both formative and summative assessment. They can be competency assessments, time-limited tests, or open ended opportunities to demonstrate understanding of course material. Students may be allowed multiple attempts to complete quizzes, and instructors can block access to other portions of a course until a certain success rate is achieved on a quiz. Feedback on individual answers can be given immediately, withheld until the end of quiz, or released later at a set time. Faculty currently use online quizzes for everything from formative assessment tools to self-assessment opportunities.

The use of quizzes, and the deployment of a quiz, should be part of the overall design of a course. While quizzes can enhance the learning environment, they are not tools to be deployed as the only assessment opportunity for students. Quizzes, whatever their nature, should be used as supplements to, and not substitutes for, interactive discussions and opportunities.

Discussions

Text-based discussions in any forum should provide two elements. First, the medium should allow more than one student to interact with one professor. Good discussions allow students to not only interact with a faculty member, but to also see or hear what other students are asking and how conversations within the course of the discussion develop. Thus, a discussion may allow a whole class to participate in the experience or may be limited to subgroups. Second, discussions that take place within the context of a class should be recorded or archived so faculty and students can go back and view the material presented. This allows for not only the live and spontaneous exchange of information, but the opportunity to review that information later for better comprehension and retention.

Unlike webcasts, static video feeds, or podcasts, discussions do not demand a high quality production. So long as participants can adequately see, hear, and access the discussion, professional quality can be diminished in favor of real-time interactivity. Several free or inexpensive services currently used for teleconferencing (e.g., Google Hangouts, Skype, GoToMeeting, WebEx, Megameeting, etc.) as well as elements embedded within most learning management systems can provide adequate tools, provided that all participants have sufficient bandwidth to participate. Appropriate connectivity, especially in interactive discussions, is important. For example, if slow bandwidth prevents participants from interacting in a chat in a way that facilitates easy exchange, the underlying pedagogical benefit of the chat is lost. It should be noted that many, but not all, commercial systems do not allow for recording of sessions, or, when they do, some processing is required to make those recorded sessions available for review.

Online Discussion Forums

Made popular at the end of many news articles and YouTube videos, the concept of online discussion forums is familiar to many internet users. Nevertheless, employing discussion forums in online learning is significantly different than its popular culture counterpart. Online discussions are more than just comment features; they provide opportunities for students to explore material and provide graded responses. Online discussions appear in two primary forms:

Broad Discussions

Broad discussions give students an opportunity to explore material, ask questions, posit opinions, and consider concepts provided in class. Often a supplement to synchronous webcasts or asynchronous video posts, broad discussions give students an opportunity to delve more deeply into concepts presented, to present questions to classmates, and to provide group feedback on learning concepts. Broad discussions are typically graded on participation, with few specific goals.

Directed Discussions

In directed discussions, students are given a particular assignment and asked to develop a concept over the course of interactive conversations with faculty and students. The discussions that follow are intended to either expand or critique the initial entry, and can be used to further develop or argue an initial posting student's point. Directed discussions are typically assessed based on specific criteria for both the initial poster and for the discussants. As noted elsewhere, rubrics that specifically identify requirements for initial and subsequent posts will provide clear guidelines for student submissions and manageable grading criteria for faculty reviewing discussion posts.

To use discussion boards effectively, the discussion board should be clearly related to course objectives and targeted to those objectives. Setting formative or graded assessments that require students to post specific information, read each other's posts and comment in particular manners, or provide other feedback, will encourage useful and productive discussion board use. The use of legal citation, including appropriate footnoting and Bluebook form, should be part of any substantive discussion. Discussion posts should be held to the plagiarism and honor code requirement of any other paper or written assignment that a law student might submit in a law school class.

The American Bar Association accreditations standards for law schools place important emphasis on interactivity. In particular, Standard 311 on Distance Learning allows online asynchronous discussions to be counted toward interactive class time. Therefore arranging the capacity to track the amount of time students spend on discussions is an important element of any discussion board set up. Most learning management systems provide time and tracking capabilities. Where actual time tracking is impractical, some schools assign approximate time-per-assignment totals and calculate overall interactivity. Typically schools only count those discussions in which a faculty member is a present and active member of the discussion, as this best emulates a live class.

Wikis

Wikis are open, group-written documents in which two or more people can create, edit, and develop material. Wikis typically provide not only a group writing space, but also a version history so each edit can be attributed to a particular participant. Wikis can be used as group project space for class groups or as a moderated compendium space for information gathering and dissemination.

When the wiki is used as a group project space, students should have clear instructions on how final products will be evaluated. Students should be made aware of the extent to which participant data is collected and how that data will be evaluated, if at all. When wikis are used as moderated information spaces, submission guidelines and evaluation criteria should be clearly delineated before submissions are accepted. Many instructors find that wikis work best when students are given at least two separate spaces in which to work: the wiki itself, and a separate discussion space. As with the wiki itself, the extent to which these moderated discussions will be evaluated should be clear to students at the outset.

Different institutions have different philosophies and policies about graduate group work. Some law schools feel that group work is fundamental to the education of students in law-related fields, and require it. Other schools feel that distance learning students should not be required to collaborate with other students because of the "hassle factor," and allow all student work to be prepared and presented solo. Where group work is mandatory, clear requirements should be set out as to how work will be generated and evaluated. It is very difficult for faculty members to tease apart the contribution of each student in a group without significant up-front assignment design. Some schools avoid this problem by simply making all students jointly responsible for a group grade, on the theory that in the legal profession group work (e.g. a law firm's representation) is evaluated on a whole, and not individual, basis. In an online setting, the challenges of coordination are substantial, but faculty can still track individual activity. Program designers should set specific standards for group work consistent across all courses.

Most wikis have traceable histories, meaning that an instructor can see who submitted information or made edits, and when those submissions occurred. Students should be informed of the degree to which their group work can be tracked, and how, if at all, information from their working experience will be used in their grades.

Faculty who construct wiki exercises should be aware of intellectual property implications. In some online programs, students are asked to produce group work that is publication worthy or otherwise appropriate for distribution outside a group setting. If a group of students constructs new work, the nature and ownership of that work should be identified at the outset, as early as during program orientation.

Recommended Practices Summary

When developing an online program, administrators should consider the appropriate platform and mix of online teaching tools available to deliver course content and encourage interaction between faculty and students.

1. *Production and appropriate use of videos.* Videos, whether they are live or recorded, should be produced and edited professionally. Students accessing live videos should have real-time support available for the entire video session. Students accessing recorded videos should have access to transcripts and other accessibility technology.

2. *Creating products students can replay and review*. Recorded videos, podcasts, voice-over-slides technology, and other content should be produced professionally in short segments and in a form where students may replay the presentation multiple times to review difficult concepts. Transcripts help not only hearing-impaired students, but provide additional reference points for all students.

3. *Providing more and less formal interactive space*. Blogs, chatrooms, and other forms of virtual conversation space can provide live or asynchronous opportunities to exchange information and ideas. Use of these tools should be carefully described and evaluated, particularly if participation counts toward a final grade.

4. *Developing robust discussions and assignments with direct instructions and high standards for student work.* Particularly in asynchronous formats, discussion forums can be used as primary interactive platforms for students to demonstrate mastery of concepts and to exchange analysis with faculty and other students. Discussions can also supplement and more fully develop ideas presented in synchronous forums.

5. *Develop systems to track course interactivity*. The American Bar Association requires schools to account for interactivity time in online classes. While easier to track in synchronous settings, schools should also develop policies responsive to the standards, which track independent student work and classroom or direct faculty instruction particularly in asynchronous settings.

6. *Provide spaces for collaborative work, and develop grading and ownership standards for work developed by groups.* Group work can be both enriching and challenging for distance learning students. Schools should design programs and assignments to lower barriers to collaboration, develop very clear grading guidelines, and articulate the ownership of group-developed products.

CHAPTER 4

Assessment of Students, Courses and Programs

A new age of assessment has dawned on all of higher education, and law schools find they are quickly required to gain expertise in the science of learning. These schools must retool courses and programs and must even develop a new curricular culture. Online programs—in part because of their newness in the legal education world, and in part because of the inherent necessity of advance design and construction—are leading the way, because they often employ formative assessments in ways other law school courses do not. This focus extends beyond individual student assessment, and provides insights into course and programmatic effectiveness, too.

This chapter addresses:

- *Assessment of student performance*. Online instructors and course designers should ensure that they can provide students with: (1) articulated and clear goals; (2) feedback on students' progress toward those goals; and (3) final assessments that articulate with particularity the strengths and weaknesses of a particular performance. With a student population that can feel isolated by distance, how can assessment tools provide feedback and also increase engagement?
- *Assessment of course effectiveness*. With the addition of gradebook and other course-wide tools, how can institutions use course data to improve the content and delivery of distance courses?
- *Assessment of program outcomes*. How does a school collect, store, retrieve, and analyze data on student and course performance to establish its claims of student achievement of learning outcomes? How does the school's process feed that data back into decision making on an ongoing basis for iterative improvement of courses and programs?

Assessment of Student Performance

The online learning model, which emphasizes clear learning goals, interactive feedback, and outcomes-based assessment, provides a new paradigm for legal instruction. Traditionally, many law schools provided doctrinal classes concluding with a single written exam and a grade at the end of the semester preceded by little or no assessment or feedback during the semester. In contrast, effective online learning almost always involves a series of assignments, each of which offers high levels of interactivity between faculty and students or among students. This interactivity provides multiple opportunities for faculty to offer feedback, grades, and coaching to improve student performance. These activities, often called "formative assessments," teach course content while assessing student progress in acquiring and applying

it. “Summative assessments” evaluate the student’s work but are not designed to contribute to the student’s learning. In law schools, the end-of-term exam is a classic example of “summative assessment” because students typically receive only grades—not feedback—on their final work, and have little or no interest or opportunity to learn from the practice aspect of the experience.

ABA Standards require the use of both formative and summative assessment in the design of programs of legal education and their evaluation. New Standard 314 also imposes an obligation to provide meaningful feedback in connection with these assessments:

> Standard 314. ASSESSMENT OF STUDENT LEARNING
>
> A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.
>
> Interpretation 314-1
>
> Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student’s education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student’s legal education that measure the degree of student learning.
>
> Interpretation 314-2
>
> A law school need not apply multiple assessment methods in any particular course. Assessment methods are likely to be different from school to school. Law schools are not required by Standard 314 to use any particular assessment method.

Multiple points of formative assessment create new opportunities for students and faculty to interact in a teaching and learning context. Those accustomed to grades being handed out only once or twice per semester, or who expect limited interaction with students, may find the experience taxing; however, these faculty and students will often grow to appreciate this style of assessment because of its opportunities for growth, and because it facilitates substantive interaction with students.

Tools for Student Assessment and Feedback

Rubrics

Each assignment and assessment should provide a specific rubric that states: (a) the learning objective of the assignment, (b) the knowledge or skill that students should develop and demonstrate through the assignment, and (c) the specific criteria on which each student will be evaluated. These rubrics should be provided to students before they begin work on an assignment, and the instructor should use the rubric as the primary grading criteria.

It is worth noting that learning objectives, goal-based assessment and rubric-bound grading are philosophically distinct from the anonymous curve-based grading traditionally deployed in law schools. The philosophy is that students should be “shown the goal posts” and then rewarded if they hit the target,

regardless of the accomplishments of their peers; this stands in stark contrast to the curve-based sorting function that law schools typically employ, where students are ranked against one another and achievement is a subjective and relative measure. This is not to say that curves cannot be used in online courses, but they become less important when assessment is more frequent and formative, and less subjective, as it often is in online courses. Where used, they must be carefully designed to harmonize both with the assessable learning outcomes required by accreditors and clearly explained so students can manage expectations, identify appropriate goals, and accurately measure achievement.

In early stages, faculty have been known to resist the structure and specificity of developing or using rubrics. They often need support to build and use rubrics effectively. During the building process, faculty sometimes discover outcome goals that are not supported by course content, and find they need to revisit and revise course design and goals. Admittedly, poorly constructed rubrics can be stifling and limiting. Good rubrics articulate outcome goals and anticipate variations within student performance. Once good rubrics are employed, faculty typically appreciate the value of articulated student outcomes and consistent grading mechanisms.

Feedback

Students should be provided timely feedback on all assignments. Grades and feedback ought to be provided in sufficient time such that students may incorporate lessons learned before attempting the next assignment or activity. Using rubrics, faculty should indicate both student strengths and opportunities for improvement. Wherever possible, narrative evaluation, in addition to numeric scoring, will provide students with the added information and incentive to improve performance. Because students perform work at a distance, they have little opportunity to meet with faculty face to face or gain a sense of their work performance or ascertain the assignment's importance to real-world skill building. To make up for that deficiency, faculty should provide extra attention to assessment and feedback.

Peer Grading

To provide significant feedback on student work in light of the volume many online assignments can generate, many professors use peer grading and peer feedback to both build assessment, and increase overall group learning and skills. Without providing detailed recommendations here, peer grading is both acceptable and recognized as highly beneficial, provided it is designed and weighted so that the overall authority—the faculty member—both has final say and a weighted evaluative role. Many learning management systems provide tools for intricate weighting and grading devices wherein peer and faculty assessment can be combined. Faculty can also leverage other tools (e.g., comment features within discussions) to allow peers to provide corrective feedback before final submissions. Peer ranking (e.g., students vote for the "best" assignment) can not only provide grading criteria, but can provide faculty with valuable feedback on overall student understanding of concepts and desirable skill development.

Attendance as Assessment

In some classes, particularly synchronous classes, assessment tools may be used as proxies for attendance and attention (e.g., short quizzes along the way to ensure students are attentive and understanding the material). The use of modified poll technology, quizzes, and other tools can provide immediate and interactive attention-testing that demonstrates the group understanding of concepts or material. The

purpose of such assessments should be made clear to students, and feedback mechanisms should be adjusted to meet this goal.

Gradebook/Dashboard

Most learning management systems provide a gradebook feature that is available to students at all times. This "dashboard" progress report provides students immediate information on their progress. Depending on design, students can see not only their current grade and feedback (typically provided in spaces directly within the gradebook) but a sense of their progress on individual learning goals. Because students are learning remotely, constant access to their progress and grades is an important element for ongoing student engagement.

Online Quizzes

A variety of online quiz tools allow faculty to present anything from a short multiple-choice quiz to a highly complex assessment, depending on the nature of the learning management system.

Quizzes can be used for both formative and summative assessment. They can be competency assessments, time-limited tests, or open ended opportunities to demonstrate understanding of course material. Students may be allowed multiple attempts to complete quizzes, and instructors can block access to other portions of a course until a certain success rate is achieved on a quiz. Feedback on individual answers can be given immediately, withheld until the end of quiz, or released later at a set time.

The use of quizzes, and the deployment of a quiz, should be part of the overall design of a course. While quizzes can enhance the learning environment, they are not tools to be deployed as the only assessment opportunity for students. Quizzes, whatever their nature, should be used as supplements to, and not substitutes for, interactive discussions and opportunities.

Assessment of Course Effectiveness

Closely tracking student achievement can give significant insight into a student's success and engagement, and, in turn, give faculty and administrators tools to retain students. Tracking student attendance, performance, and progress will often show nuanced differences in student performance based on feedback. Student tracking, through gradebook functions as well as more broadly in assignments, online classrooms, and other forums, allows for a variety of other benefits, including retention and program assessment. Traditional students have the benefit of a physical classroom, and make lifestyle choices that reinforce this, such as moving to a new city with new peers and new social networks. Online students are independent, with different physical routines to reinforce class work and different ways to access supportive student networks.

Similarly, careful tracking of overall student interactivity and progress will provide faculty and administrators with valuable information about the success of the course. Thoughtful feedback can be amalgamated and studied for trends. For example, if students are routinely told over the course of a class to "improve legal research and citation," and this comment persists from the second week to the last week of class, faculty and administrators can identify a needed skill. Similarly, administrators can determine through data from study over several course offerings which students—and what percentage of overall

students—master particular course goals. Adjustment to curriculum, pedagogy, or even orientation and selection criteria may be considered as a result of data. Tracking data and demonstrating the use of such data is of increased importance to a variety of accreditors.

Assessment of Program Outcomes

Assessment data, whether collected on individual courses, faculty, instructional materials or individual students, is now a critical institutional resource. Increasingly, the ABA, regional and national accreditors, students, alumni, the media, and consumer watchdogs expect law schools to be proficient in the sophisticated use of data in institutional decision making. ABA standards adopted in 2014 require all approved law schools both to prepare and publish learning outcomes for the program of legal education. These standards must be implemented by 2017 per the ABA's phased implementation plan.

> Standard 301. OBJECTIVES OF PROGRAM OF LEGAL EDUCATION
>
> (a) A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.
>
> (b) A law school shall establish and publish learning outcomes designed to achieve these objectives.

Revised Standard 302 specifies the minimum outcomes required of a sound program of legal education:

> Standard 302. LEARNING OUTCOMES
>
> A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:
>
> (a) Knowledge and understanding of substantive and procedural law;
>
> (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral
>
> communication in the legal context;
>
> (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
>
> (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

New standard 315 requires schools to implement a plan for continuous improvement using data from assessment of the program of legal education, including student learning outcomes.

> Standard 315. EVALUATION OF PROGRAM OF LEGAL EDUCATION, LEARNING OUTCOMES, AND ASSESSMENT METHODS
>
> The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and

> shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.

Interpretation 315-1 of standard 315 offers an extensive but not exhaustive list of the types of data schools may collect and use as part of the assessment.

> Interpretation 315-1
>
> Examples of methods that may be used to measure the degree to which students have attained competency in the school's student learning outcomes include review of the records the law school maintains to measure individual student achievement pursuant to Standard 314; evaluation of student learning portfolios; student evaluation of the sufficiency of their education; student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge; bar exam passage rates; placement rates; surveys of attorneys, judges, and alumni; and assessment of student performance by judges, attorneys, or law professors from other schools. The methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school and law schools are not required by this standard to use any particular methods.

The new and revised ABA Standards together require law schools to complete extensive work on learning outcomes, data collection and analysis, reporting, and data-driven decision making. None of these standards uniquely apply to distance learning programs. To maintain institutional compliance, data on the JD program at any school will, at a minimum, be required. It is recommended that institutions collect and analyze data on all programs with significant enrolment within the law school to comply with Standard 315.

Distance learning programs will, however, often provide a model for other programs on how to collect and use data in program evaluation and improvement. By the very nature of a well-designed distance learning curriculum, significant data will be available to the school from formative and summative assessments, student activity tracking, and overall progress toward objectives. Resources for analysis of distance learning program data will still be required, but the availability of rich data on student achievement—characteristic of properly designed online programs—will often provide a model for compliance in other areas of the school.

Recommended Practices

1. *Student assessment*. Assessing a student's progress and a program's overall effectiveness is not only a good practice, it is also a requirement of the American Bar Association and most other regional and outside accreditors. Understanding the appropriate tools of assessment and how to use feedback and outcomes data to improve student and program performance is critical to the success and compliance of a law school distance learning program.

2. *Course assessment.* Rigorous student surveys should be coupled with data collected from the class to assess whether learning objectives have been met. An analysis of the data should

include attendance, participation, assignments, and qualitative and quantitative feedback. Each iteration of a class should be studied for its effectiveness. Subsequent course offerings should be adjusted appropriately based on the data obtained.

3. *Program assessment.* Data from student and course outcomes, student evaluations, bar examination performance, and other measures should be aggregated and stored in connected systems to permit analysis. Periodic overall assessments should be prepared for each program of the law school, addressing achievement of program outcomes as documented through these data, and adjusted appropriately. Use of the information provided in future decision-making should be documented to demonstrate a "closed loop" of continuous improvement resulting from the collection, analysis, and use of assessment data in decision-making.

Chapter 5

Student Orientation, Student Services, and Computer Access

Before students even begin the program, institutions should lay the groundwork for students' success with clear expectations, thorough orientation, and attentive student services staff. Student service offices and personnel should be reconfigured and retrained to meet the particular needs of distance learning students.

This chapter addresses:

- *Orientation*. Distance education students are in need of orientation, not only to the law school environment, but to the technology that will be used in their courses. How can a program utilize a good orientation process to accommodate both of these needs?
- *Student services.* How can various student service offices—including advising, career services, and student services—provide distance education students with full access to their services in a meaningful way?
- *System requirements generally.* What particular technology hardware and software should be required for students participating in distance learning classes and programs?
- *System requirements across multiple devices.* With the proliferation of mobile devices, what is the obligation of a distance legal education program to make coursework available on multiple devices and platforms?

Many online students access a distance learning opportunity because they are not able to participate in a residential campus experience: jobs, families, illness, or other factors make distance learning the only option for pursuing further education. Because these students often have significant life events competing with their ability to attend school, they must be provided customized student support services.

Orientation

Most distance education programs recommend using the course platform to deliver orientation programming. This exposes students to the platform and is a first step in introducing them to the technology. It also provides a means of identifying students who are having difficulty early on. Many schools require students to complete a proficiency test of sorts that demonstrates their ability to use the course platform, and tests whether a student's computer is adequately configured to access course information and assignments. This test could include, for example, uploading an assignment, completing a short quiz, and posting to a discussion board. Along with the proficiency test, other uses of the online orientation introduce students to various student support services, such as advising, academic success, and career services and the designated people in those departments who can help them.

Online orientation programs can also be used to memorialize acceptance of particular school policies and practices. Several schools require students to electronically sign honor code policies as part of orientation. Those signatures are electronically stored by the school. Some schools also provide key institutional information (e.g., student handbooks) and initial skill building exercises (e.g., how to brief a case) as part of online orientation materials. Orientation remains an open course for students, with all material available throughout their time in the program. Students can revisit policies, skills, or other materials as needed as long as they are enrolled.

Some experts argue that initial proficiency tests should present a realistic example of the type of work required in the course, rather than an abbreviated or simplified set of tasks. This serves as a more accurate measure of students' ability to use the platform and gives students a better idea of the type of work they can expect in the course. Program directors can use these early measures to identify students who may need additional assistance and mentoring.

Student Services

The array of student services provided on campus must be duplicated for distance learning students. However, the nature of these services—and the ways in which students access these services—may require adjustment from campus norms. Unlike residential students who have connections with the campus and fellow students, distance learning students might withdraw or discontinue their studies in response to even simple challenges in accessing school resources. Thus, access to student services can be a critical element in both the recruitment and retention of students.

Some schools that have launched distance learning programs note that student service personnel are particularly challenged by "doorway moments." A doorway moment occurs when a residential student, attempting to resolve an issue or ask a question, shows up in the office of a student service employee to work out a particular problem in person. When given the choice between answering a distance learning student's email or telephone call and interacting with the live student standing in the doorway, the rational and responsible employee will almost always help the student who is physically present. Particularly during busy times of the year, this means that student services staffers find themselves with a list of unanswered email and phone calls from distance learning students at the end of the day, even though they have spent the entire workday answering student questions and providing customer service. At the same time, unlike residential students, who know that they can always stop by a campus office if their email or phone inquiry goes unanswered, distance learning students find an unanswered message disconcerting. Those students will either walk away from a program (like many customers who hang up after spending too long on hold) or bombard offices with repeated messages out of concern that their original inquiry has not been answered. Multiple inquiries from students can cause personnel to feel anxious, which increases tensions between the student and the student services office. Understanding this dynamic is critical to providing appropriate staffing and systems to ensure distance learning students can access appropriate information and resources.

Advising

Online students should have adequate access to advisors who can provide course selection and academic advising. Distance Learning students have unique needs, including competing priorities and work conflicts, that may impact their ability to participate in courses. Online resources and adequate access to advising functions—sometimes outside traditional office hours—are critical to providing online students with sufficient academic counseling. Students in online programs, particularly programs that offer one class at a time in compressed formats, may find that students wish or need to take time off at various times throughout the program. Advising students on the implication of taking time off, including the impact on availability of elective courses, graduation date, financial aid eligibility, and loan deferment should be available throughout the program. Most current online programs identify a strong advising program as the most effective retention tool.

In many schools, academic advising is a separate function from financial aid advising, particularly where bulk tuition charges mean students can easily substitute classes or vary the number of credits from semester to semester. In many distance learning programs where classes are offered sequentially, dropping a single class or making a credit contribution can have significant financial aid consequences, including disqualifying students for financial aid, placing deferred loans into repayment, or removing a student's eligibility from employer reimbursement or government tuition programs. To this end, distance learning students in such programs should be counseled by advisors who understand both the programmatic and financial aid implications of particular academic decisions.

Career Services

At this time, few schools have a fully developed career services program specifically designed for their distance learning students. The schools that have developed such programs report success, but note that delivery is difficult. Three particular characteristics of online students require a rethink of Career Services efforts. First, many online students are currently employed as they study. Some students do not wish to seek a new position but use online degrees to advance within their current place of employment. Thus, career coaching must be more particularized to the individual student's circumstance and employer. Other students wish to move out of current careers and into new fields, using the online degree as a catalyst. Coaching students on a mid-career change requires different career counseling resources than counseling students graduating from their first professional degree program.

Second, online students often currently live in the geographic location where they will seek employment. This may be a place remote from employers, alumni, and other career services resources that are known to the institution. Unlike more traditional students who may attend law school in one part of the country and intend to relocate elsewhere, distance learning students can begin networking with potential employers in their home community early in their program. This long-term approach may again require different career counseling advice than someone embarking on a shorter term job search.

Finally, a few of the critical tools deployed by career services offices to help students create contacts and potential job networks may be impractical for online students. Distance learning students who work full time may simply be unable to participate in externships, semesters-in-practice, career fairs, conferences,

or other events due to job, family, or other obligations. Career service personnel must rethink these opportunities or develop creative options to approximate these traditional job search and experience-building tools.

Where schools do not yet have career services in place, or where those services will only approximate the services provided to traditional residential students, it is incumbent on programs to carefully articulate to students what type of career services will and will not be available to distance learning students.

One school has designed career services directly into its distance learning program, appointing specialized personnel within Career Services to deal with online students. These Career Services officers are specially trained to meet with distance learning students within the first semester of a student's program and develop individualized job search plans for each student, where appropriate. A second school developed a series of no-credit online classes for online students, incrementally working students through the steps of a job search at a rate appropriate for students enrolled in the program. Once students complete a set number of modules and accompanying tasks—such as developing a job statement, drafting a resume, developing a LinkedIn page and personal marketing strategy—students are invited to meet with Career Services personnel for more individualized career counseling.

Student Services Generally

All offices with which students interact (Financial Aid, Business, Registrar, etc.) should provide means of contact or alternative hours to accommodate distance learning students. Schools should have a dedicated person available to help students with illnesses, emergencies, in need of leave, or other experiences that inhibit a student's ability to participate. All information, resources, and forms required of students should be provided in electronic form, and allow for electronic signatures.

Library resources, technology services, and any other service that students may require during the class experience must be available in a form and at a time that can be reasonably employed to meet the needs of the student while in the class. For example, the school may provide service hours that match course access times or that are available on a schedule aligned with student needs. Similarly, schools must have in place a method for students to request accommodations under the Americans with Disabilities Act. This includes securely providing necessary medical documentation and discussing accommodations needs with expert personnel.

One library which had not been open on Saturdays added Saturday virtual reference hours during which students could contact a librarian via phone, email, or chat. The service was offered to all students. While most questions came from distance students, the service also benefitted on-campus students who used the service.

Student Computer Access

Asynchronous online education provides the distinct benefit of allowing students to access most educational resources at any time of day or night. Because of this flexibility, students who have other obligations, live in remote areas, or who travel, can access courses on demand. The asynchronous environment also allows students with particular learning modalities or accommodations better access than some forms of a live class. For example, written transcripts can be made available for students with hearing disabilities, and second language students can use additional time to review material for unknown or technical vocabulary.

System requirements

Most schools offering distance education establish technology requirements for students, including computer specifications, access to reliable internet connections, and required software. Establishing requirements up front ensures that students aren't hampered by inadequate technology, and are more able to focus on coursework without the distractions of technical issues.

When schools require, rather than recommend, particular technical capability —for instance, computers with particular specifications—the cost of those requirements can become a part of the student's financial aid package.

System requirements across multiple devices

With many mobile devices on the market today, including tablets and smartphones, students may be attempting to access online material in a form their device does not support. For example, Apple products such as iPads and iPhones do not support Adobe Flash Player, a common animation and web page software. Similarly, many students working in an asynchronous environment will want to access information on their smart phones. While some proprietary learning management systems have created specific mobile-compatible features, others have not. Accommodating these differences may involve separating audio and video feeds, reducing or limiting graphics, changing the look of a website when an LMS is accessed by a mobile device, and other technological workarounds. Whether, and to what degree, an institution will support mobile device course access is an individual decision. The proliferation of these devices demands that institutions pay attention to how students are using them.

Recommended Practices

When developing an online program, administrators should consider the types of systems students use and what the system requirements for the online program should be. Student services of all types should be offered to students to enhance their educational experience, increase retention, and build school loyalty.

1. *Orientation.* Orientation programs should be used to both provide information and to test each student's computer aptitude through simulated assignments. These assignments can be used both as diagnostics for student computer aptitude and to identify particular students who may need mentoring.

2. *All types of student services must be reconsidered in light of distance students*. Distance education students may require extra attention due to their particular circumstances. Also, consideration should be given to providing service hours on evenings and weekends, methods of delivery, and making all documents available online—including allowing online signatures.

3. *Online course delivery can be negatively impacted by poor computing capability*. Institutions should consider establishing minimum system requirements for all students in distance learning courses.

4. *Schools should plan for student use of mobile devices*. The convenience and omnipresence of multiple mobile devices requires institutions to consider how to deliver online course content via these devices. The multiplicity of these devices places additional burdens on institutions; at a minimum, institutions should consider employing techniques to ensure usability of course content on devices.

CHAPTER 6

Training and Technical Support

The ABA's Standard 311 requires that all faculty and students who participate in online classes receive sufficient training and technical support. A school's minimum obligation to fulfill this requirement is recommended to include the following facets.

This chapter addresses:

- *Faculty training.* In addition to technology training in the learning management system and other content delivery systems, what training in online teaching should the school provide to faculty?
- *Student training.* In addition to technology training in using and interacting with the learning management system, classroom, and other content delivery systems, what training in online learning should the school provide?
- *Support staff training.* How can other disciplines and expertise, such as content development and curriculum design, be integrated into the curriculum model?
- *Technical staff training.* What actions by technical support staff convey a responsive, expert, calming, and caring demeanor to students who experience technical difficulties?

Faculty Training

While many faculty members reach the front door of their first classroom without any specific pedagogical or technical training, it is unwise—if not nearly impossible—for faculty to enter the world of online learning without training in a variety of areas. Appropriate training will enable faculty to be self-sufficient in these areas and set expectations for distance learning instruction that reflect best practices. Note that some online learning models scale their offerings by placing one supervising professor, often a highly qualified faculty member, in charge of a number of instructors who in turn deliver different sections of the same course. Everyone involved should be provided training appropriate to their role, including training for supervising faculty, facilitators, teaching assistants, and anyone else in an instructional or support role.

Depending on the institution's model, faculty may need different levels of technical training. Faculty should have sufficient training to interact effectively with students online and be able to access each part of the course. Faculty should also have sufficient training so that they can perform all grading and use gradebook functions without assistance.

Pedagogical Training for Faculty

Faculty training should include both pedagogical and technical training sufficient to give faculty the ability to perform teaching duties within the medium of instruction. Pedagogical training should include both the rationale for goals-based education, the mechanisms for appropriate assessment, and the teaching tools used in the system. Faculty who develop courses should have a deep understanding of outcomes-based education and sufficient training in assignment design to craft appropriate learning goals based on their content expertise. Faculty should craft assignments that will adequately assess students' ability to master those goals. Teaching faculty should have sufficient training in pedagogy and content to be able to accurately direct student activities and appropriately assess student outcomes.

Technical Competence

Revised rule 1.8 of the Model Rules of Professional Responsibility requires that attorneys must keep abreast of technological changes relevant to the profession.[24] While the technology used in distance education does not necessarily overlap with the technology used by attorneys—such as digital drafting, e-discovery, document mining, electronic filing, and other recent technical advances—general familiarity with online access, discussion, etiquette and remote interaction skills are directly within the scope of the proposed Model Rule.

Student Training

Student training should include an orientation to the technical tools used in the class. Students should be given clear expectations about interactivity and quality of work. Because students often use technology for a variety of purposes—many of them highly informal—clear and specific quality guidelines should be articulated as part of initial training.

In most programs, training includes an introduction to the program and the institution's goals for it, and they are taught how to interact with curriculum materials in ways the instructor expects. Students should learn the appropriate levels of formality or informality for the program, appreciate the importance of their individual contributions, and be versed in appropriate netiquette (online behavior).

Technical Training

Prior to beginning a class, students should have sufficient technical orientation to ensure they possess all the relevant computer software and plug-ins necessary for the class. Students should have training dedicated exclusively to exploring the online space and should practice with all of the key learning components like video streaming, connectivity, posting, submitting assignments, and accessing grades. Students should have an opportunity to work with a technical advisor to ensure all aspects of online learning materials are working correctly before the start of class.

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[24] Model Rules of Professional Conduct, Rule 1.8 Maintaining Competence.

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. http://www.american-bar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1.html

Support Staff Training

A variety of different kinds of staff support may be provided in distance learning programs. In some programs, faculty will be asked to fill each role; in other programs, each function will be assigned to a different staff member. Whoever is performing these tasks—course developers, faculty, staff members, or others—should have adequate training for the roles they inhabit. A fully developed program, using each of these professionals, is notably expensive. Upfront investment, however, can provide strong student outcomes and satisfaction, and address issues that are likely to be raised by accreditors down the line.

Content Expert

The content expert, usually the faculty member, is the person who identifies the pedagogical goals of the course and provides the appropriate content guidance to develop a satisfactory academic experience. At minimum, this person should be primarily responsible for developing course goals; a syllabus; and appropriate literature, material, resources, and exercises that will provide students with adequate exposure and practice to accomplish course goals. The content expert also determines the appropriate assessments to measure student achievement. Content experts are expected to know the field of instruction and will almost always be sufficiently credentialed to teach the course upon completion.

Course Designer

A course designer, sometimes called an instructional designer, is a partner with the content expert. Course designers ensure that the pedagogical goals of a distance learning course are adequately developed and delivered within the delivery systems deployed in the program. To this end, course designers must have sufficient training to understand educational pedagogy, technical course development, statistical analysis, and program development.[25] This technical expert will guide content experts in the development of resources and exercises within the learning management system. Course designers will have sufficient technical expertise to develop and appropriately incorporate course materials, develop and program exercises, and provide quality control assurance for courses based on institutional policies and procedures. Course designers are responsible for design before live instruction, or, in the case of asynchronously delivered courses, prior to student participation.

Technical Support

Technical support should be available to faculty and students throughout the actual running time of a synchronously delivered class and more or less continuously during an asynchronously delivered class. This support is necessary to deal with both primary delivery and system challenges. In synchronous systems, technical support should be available throughout live sessions to both setup and ensure one time delivery, monitor delivery throughout the synchronous session, and provide troubleshooting should problems arise. To that end, technical support personnel should be adequately trained in all portions of the synchronous system so as to be able to both deliver and troubleshoot systems. Technical support should have appropriate authority to be able to modulate systems to ensure interactive delivery with students

[25] Several universities now offer undergraduate and graduate degrees in instructional design, including Florida State University, Boise State University, University of Texas at Austin, Brigham Young University, and University of Georgia. *See also* M. Orey & P. Fortner, *Worldwide List of Graduate Programs in Learning, Design, Technology, Information, or Libraries, in Educational Media and Technology Yearbook* (2012).

enrolled in the course. In asynchronous systems, technical support staff should be well versed in all deployed technologies and able to provide support to faculty and students when they encounter challenges and glitches. Technical support should have sufficient authority to fix all technical problems and should be available at times when students will need such support, including evenings, weekends, and any time students may reasonably be expected to work on asynchronous programs.

All programs should have accessible technical support for both faculty and students during the period of instruction. For synchronous instruction, technical support should be available for a reasonable period prior to the start of class, throughout the live session, and for sufficient period at the end of class to allow for recording and program shut down. In asynchronous environments, technical assistance should be available to both faculty and students 24/7, through both computer and non-computer based means such as a call center.[26]

All technical support staff should have the ability and desire to convey genuine interest in assisting the faculty or students that they support and the ability and willingness to do whatever it takes to resolve problems quickly and correctly. Few things can erode the reputation of an online program faster than technical problems, and superior support can make the difference between a program that is successful and highly regarded and one that fails rapidly. When selecting and training technical support personnel, attention should be given to calm-inducing and confidence-building interaction skills and protocols. For example, before beginning assistance, support personnel should take care to clearly understand the problems and goals of the student or faculty member. Afterward, the support personnel should follow through with additional research if necessary until the problem is resolved.

Recommended Practices

Train faculty and staff on systems and teaching. Before participating in any distance learning experience, faculty should receive both pedagogical and technical training. At minimum, faculty should be trained in outcomes-based course design, including how to give appropriate feedback and provide responsive interactions within the medium. Faculty should develop sufficient technical capacity to operate effectively in the distance learning environment

1. *Train students on system and learning.* Students should participate in a targeted orientation program that, at minimum, acquaints them with online learning techniques, technology, and expectations. Students should test all necessary technology, including connectivity and software, before the start of any distance learning class.

[26] It is worth noting that year-round, 24/7 support can be an expensive undertaking for startup programs. This function can be outsourced and need not be live. Chat-based support, or specially delineated "warm" support (a promised response within a three-hour window) can typically suffice, provided the level of service and expectations are carefully set with students at the start of classes.

2. *Engage qualified experts when building and maintaining courses*. Content experts and course designers should collaborate on the design and development of online courses, lending their respective expertise to the learning outcomes and to achieving the outcomes within the available systems.

3. *Train technical support staff to provide high quality, caring service*. Programs should have expert, caring, accessible technical support for both faculty and students during the period of instruction. When students rely heavily on technology for the delivery of instruction, technical support should be immediately available at all reasonable times a student may utilize for attending class, completing work, and studying independently. For a mixed environment of adult and traditional learners across multiple time zones, this often means extended tech support hours—at a minimum from 5:00 AM to midnight in any time zone serviced. Finally, technical support staff should be trained in techniques and processes to convey genuine, caring and expert assistance to student and faculty in stressful downtime situations.

Chapter 7

Institutional Integration and Administration

Distance learning programs present managerial challenges, bringing new working processes, regulatory requirements, response time, and the need to coordinate or re-think academic calendars. As schools plan to launch online programs, they are sometimes surprised by how much previously unrelated departments must coordinate. Planning ahead to integrate staffing, budgeting, administrative work flow, and student needs will assure that programs launch and grow successfully.

This chapter addresses:

- *Teaching faculty.* How do you staff online courses? How do staffing decisions impact perceptions of the program?
- *Administrative integration.* What offices will have to coordinate, communicate and develop new work patterns to effectively support online programs?
- *Student support integration.* What unique needs to distance learning students present, and how do student support services best meet those needs?

Many institutions are currently considering the degree to which online offerings should be interchangeable with, or integrated within, traditional residential offerings. In many non-JD degree programs offered by law schools —for example, LLMs, specialized masters programs, and post-graduate certificate programs—schools offer the same classes online and in residential formats, and students may pick the session that best fits their needs. A few law schools, under variance from the ABA, have begun to offer both online and residential versions of key classes. As integration of both JD and non-JD programs increases, there are several curricular and management decisions to consider.

Teaching Faculty

Some schools employ their core residential faculty to develop and teach their online courses. These schools feel that using core faculty protects the integrity of the brand and the quality of the course content. By using long term faculty who have a known teaching reputation and a vested interest in the institution, the school may feel that the integrity of the program is maintained.

Other schools almost exclusively use adjuncts to develop and teach online courses. Because adjuncts are typically paid less than residential faculty—tenured faculty in particular—this decreases overall program costs. However, the fluidity of adjunct teaching pools makes quality control more difficult and requires additional management and oversight.

Some schools use a mix of full time faculty and adjuncts to deliver courses. Institutional faculty are often responsible for course creation and adjuncts teach individual sections of the course as these programs grow and develop.

In some schools, online courses are regarded as a regular part of a faculty teaching load. In other schools, faculty who teach online courses are compensated for those instructional hours through overload contracts. Course creation is a separate enterprise from course teaching, and should be compensated independently from teaching, either through additional compensation or release time. Faculty's reception of a program—and, perhaps, the reception by the larger law school community and potential applicants—will be affected by whether online classes are part of a faculty's regular responsibilities. If not, course creation may be regarded as a peripheral endeavor staffed capriciously by internal faculty or miscellaneous adjuncts. Thus, administrators should be aware that staffing decisions may impact a program's reputation.

Administrative Integration

Creating a distance learning program necessitates a level of communication and coordination between departments that may be unprecedented in most law schools. Offices that typically work efficiently and independently must coordinate over seemingly unrelated issues in a world of new and changing scheduling, billing conditions, reporting requirements, regulation, and customer expectation. For example, changes in state regulations can affect where online programs can be marketed and offered, requiring marketing and admissions personnel to work closely with general counsel or compliance officers, something they may never have done before.[27]

All modern student populations increasingly demand access and easy availability of campus services in online and mobile formats. Distance learning students in particular expect ease of access, self-service options, and immediate response to inquiries. Unlike campus students who can follow up in person, distance learning students depend on robust integrated online services. These students may take the lack of such services as an indication of low academic program quality. Thus, it is imperative that departments work together to produce an efficient and responsive process that seamlessly addresses all student administrative concerns. Ideally, students should be able to register, view their bill, pay their bill, access student records, and connect with service personnel from a single portal on a single device in a single sitting.

While departments must coordinate for efficiency and to maximize student experience, schools must also consider how to budget and deliver online programs. Some schools integrate online offerings into their regular instructional budget, registration systems, business office functions, and other school offerings. Initial set up challenges should not be underestimated: online offerings typically occur at different cycles than residential classes, requiring all business functions within an institution to adopt new terms, billing cycles, financial aid cycles, and student contact protocols. Often policies within existing student handbooks will take on unintended outcomes when applied to online course offerings. Moreover, because

[27] See Chapter 10, Accreditation and Regulation.

students are not typically on campus, their ability to reach appropriate business offices and resolve problems is limited. Careful review of all business systems, and specific plans for student contact and information, should be developed prior to the first online offering.[28]

Some schools have set up parallel business processing units for online programs, akin to a continuing education office with its own registration and billing systems. Schools that choose to set up parallel and independent systems for online programs should pay careful attention to following all Title IV financial aid and billing requirements as well as identifying student registration and privacy concerns. Despite the initial attraction of setting up a self-contained billing system for online programs, when programs increase in size, and the complexity of student billing and financial aid increases as well, programs often find the expense of running parallel systems greater than the benefits.

Online program have unique features that can create challenges for registrar, financial aid, business offices, and other campus functions. Many online programs are structured around calendars that differ from the residential academic schedule. For example, online programs may offer one course at a time in a compressed semester of seven weeks. This allows the school to offer multiple courses per semester and creates multiple entry points per year; online programs can start in the fall, spring, or summer semesters, as compared to residential programs, which typically start once a year each fall. Financial aid in particular may have to adjust loan packaging schedules to accommodate alternative calendars. Packaging multiple times each year as new courses come on line and new cohorts enroll requires adequate staffing and other resources.

Student Support Integration

Distance learning students have very different needs and less access to support than traditional residential students. First, because they are typically not on campus, they do not have the opportunity to resolve issues by visiting various offices and commanding individual attention. Instead, issues are typically resolved over the phone or by email. Second, because distance learning students are typically employed full time while pursuing online courses, they are often not able to call appropriate offices to resolve issues during normal business hours. These two facts alone can mean students have less access to support and fewer avenues to resolve academic issues than traditional campus based students. All campus offices, including but not limited to the business office, financial aid, registrar, student services, accommodations, advising, and the bookstore should have hours and avenues dedicated to supporting distance learning students, particularly during critical periods such as registration.

Some schools employ a staff member who serves as a single point of contact for distance learning students. This staff member works hours that are commensurate with distance learning student schedules, for example, working evenings and weekends. This staff member answers questions about all aspects of student

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[28] Note that the introduction of distance learning students can place unique burdens on student service offices. See Chapter 5, Orientation, Student Services and Compute Access, infra, for a discussion of these particular challenges.

administrative experience, including billing, financial aid, registration, accommodations, books, commencement, policies, appeals, and more. When necessary the staff member consults with other offices, but that staff member is the primary if not the only contact for students. Having a single contact person increases retention, particularly where contact is frequent and robust. Institutions that employ the single point of contact model can avoid staffing multiple offices for evening and weekends to accommodate online student populations.

Distance learning students rely heavily on technology and therefore may have different technology support needs than campus-based students. For example, online students who experience computer difficulties typically need their technology issues addressed immediately—they can't access class, work on assignments, or be "present" when their technology is down. They often can't get live support, either from a campus IT department or at a retail computer store because of work schedules. Ironically, many systems expect students to use technology—like the internet or phone—to get technology support. It is important to offer technology support outside of business hours and through several different modalities.

Online students have many of the same needs for student support as residential students. Online students are characteristically adult learners and are often fully employed. Many have families and other time consuming responsibilities and priorities beyond their coursework. Family emergencies, workplace demands, and other life events can prevent students from participating successfully in classes. Crisis management for online students must take a different form, including student support accessible outside of business hours, and may require greater provider expertise.

As law schools make online learning options available, active duty military personnel comprise an important and growing population of new students. Deployed service personnel are often remarkable students but face unique challenges, including but not limited to blackout deployments, combat and combat-related injuries, and changing deployment status. Service personnel are often restricted in the hours they can access class or contact student services, and are sometimes restricted in the information they can share about their circumstances. Self-service features and access to knowledgeable and sensitive student support personnel can greatly support retention and student success.

Recommended Practices

When developing an online program, administrators should consider whether and how to integrate new online programs with existing departments and processes.

1. *Teaching and faculty.* Schools should establish an approach to compensation which reflects program goals. Administrators should be sensitive both to the cost of staffing new classes with full-time faculty or adjunct instructors and to the perceived impact such staffing decisions will have on the integrity of the program.

2. *Administrative integration.* Online programs require administrative offices to work together to reconfigure existing work patterns and policies, including financial aid calendars, billing policies, and student academic policies to ensure both departmental efficiency and responsive student services.

3. *Student support integration*. Institutions should plan for the particular needs of online students, particularly their need to access resources outside of business hours. Schools should consider the necessity of a coordinated approach to providing student services and be sensitive to the needs of adult learners and particular populations of distance learning students.

Chapter 8

Intellectual Property Law as Applied to Distance Education

Intellectual property concerns in traditional law school classrooms typically invoke appropriate use of hard-copy written materials. In the distance learning context, the use of texts is only one of many considerations.

This chapter addresses:

- *Rights in course design and materials.* What rights are held by the institution, the professor, and the technical staff who develop and produce a course?
- *Rights in class-generated interaction and student work product.* What rights do students hold in materials and interactions that are generated in an online classroom, and how can an institution effectively produce and use those materials for both content and marketing purposes?
- *Rights in third party materials.* What unique aspects of copyright and intellectual property protection create perils for online programs?

A well-planned distance education program needs to establish clear intellectual property (IP) policies that fairly address the needs of the educational institution, its faculty, and its students. At this point there are no fully settled best practices, although the needs of providers, particularly in the asynchronous mode, probably require some departure from traditional models. The use of third-party material also needs to be approached carefully within the framework of copyright and fair use rules. The one clear requirement for any program is that its IP structure fully enables its intended operation.

Rights in the Course Design and Materials

In the traditional world of nonprofit legal education, the teaching faculty member generally asserts ownership in the syllabus, in-class delivery, and any instructional and reference materials she creates. Although there is an arguable legal basis that these materials are works for hire under copyright law, the widely honored custom of the industry has been to recognize faculty ownership. The faculty member may, of course, enter into an arrangement with a publisher to license or assign rights in her work, as in a casebook, hornbook, or study guide, generally on some kind of exclusive and long-term basis. Commercial publishers then charge students for these books outside the normal tuition structure, often paying royalties or even an advance back to the author. Scholarly work in the law faces a variety of publication arrangements, including copyright assignment, license, and retention by the author. Article

scholarship is generally (although not always) published without compensation. That being said, scholarly books may entail an advance to the author or earn royalties.

In distance learning, the model is also variable. IP rights allocation and pedagogy in synchronous teaching most often follow the traditional model. But at the very least, the provider does need to acquire rights from the teacher to webcast or otherwise distribute the course design and classroom performance, along with sufficient rights to any ancillary materials for reproduction and distribution as well. Such rights would typically be compensated through the teaching fee and not as a separate payment. While such classes are often recorded for archival and "quality control" purposes—a right that should be granted as well—they are rarely reused verbatim; if the school contemplates reusing either the teaching performance or the course design, then rights for that should be negotiated as well.

Asynchronous models may prove more complex, and rights allocation may look more like the textbook publishing model. As described above, the provider institution will generally commission a series of different players to come together in a collaborative way to provide both subject matter and pedagogical design skills in the creation of the course; eventually this will require a teaching performance as well. As in the case of textbooks, the commissioning institution will generally intend to reuse these elements in subsequent iterations of the course, iterations that may involve new teaching faculty or the redesign of the course by new creative and knowledge players. Furthermore, the commissioning school may want to further license some or all of the course to other providers or develop additional versions such as e-books, perhaps in collaboration with a third-party publisher. All of these practices will necessarily involve some kind of long term or permanent grant of rights, whether through work-for-hire, assignment or license structures. This grant may be compensated by a one-time buy out payment, or may be subject to some kind of use-related residual or royalty. One-off or short term licensing, while potentially beneficial to the creator, puts the institution at considerable risk and is likely to appear only in unusual contexts.

That said, unlike even a textbook, institutions make direct investment in the tools of online course development that may distinguish online course development from any other form of faculty-produced work. Schools will invest in technology, including software and hardware; they will employ a course designer and technical support staff; and they will involve third-party consultants to ensure that content and technological delivery are sufficiently robust. Thus, an institution may be regarded as a co-producer or co-developer of a course. Coupled with the practical need to reproduce a course multiple times over multiple semesters using multiple instructors, for practical purposes a school may wish to hold all intellectual property rights to a course.

Thus, particularly in the asynchronous approach, some schools may choose to grant exclusive rights to the commissioning institution. Here there is room for greater variation. A faculty member interested in moving between institutions may wish to retain some rights in her designed course—or at least the ability to design a similar course at a new institution on similar subject matter. The initial grant to the former employer could also contain some kind of shared ownership, allowing the former institution to keep using the design while the designing faculty takes it to a new context.

To date, several schools have regarded course creation as a work-for-hire and have paid faculty significant sums to create online courses that are fully owned by the

institution. Faculty may use independent materials such as PowerPoint slides in their own teaching, but they may not reproduce or sell that material in another online setting. A few schools have developed a revenue share model, giving a faculty member a share of tuition from each student who takes the course over a number of years. These schools report that it is administratively complicated to track payments and cut checks to faculty; it is similarly complicated if a course needs to be updated by someone other than the faculty member who originally created the course.

Work by the educational design consultant is more commonly done with work-for-hire or buyout style contracting, reflecting practices applicable for editorial and design professionals in the book publishing industry. The teaching faculty will also create content, both through tweaks and improvements to the course material and through contributions such as comments, assignments, and other interactions within the class itself. Here too, licenses should permit capture, dissemination, and use; a long term buy out will provide the greatest flexibility for the provider.

Rights in Class-Generated Interactions and Student Work Product

Distance education programs should also attend to rights in the class-generated interactions and student work product. At the very least, agreements with students should fully authorize the capture, reproduction, and sharing of the student-generated material within the context of the course. Recording for future and outside use is also a possibility. Such uses could include sharing examples in future classes, depiction in publicity materials, or even publication as papers, wikis, or edited materials at the school or by outside providers or vendors. Online experiential programs such as clinics or internships should explicitly address not only IP allocation but also issues of confidentiality, competition, and legal ethics. Planning and the inclusion of appropriate language of grant and retention in agreements with all the participants will prevent IP related problems as the program goes forward. Finally, outside of the contract between the student and institution, the practices of the program should respect the rules of FERPA, the US Department of Education, and various state authorities on issues of educational privacy and data security.

Rights in Third-Party Materials

While proper IP clearance or reliance on fair use is necessary for traditional modes of teaching, the permanence and searchability of the digital records left by distance learning can make a lapse particularly exposed and discoverable. Each case where a third-party creative element or personality is used should be covered either by permission or by a valid fair use, first amendment right, or other justification. Many law schools already approach this challenge in the context of preparing course packs for traditional courses. Unfortunately, clearing material for online use can sometimes cost more or even run into absolute roadblocks of reluctance by the copyright owner.

Permission is not always needed, however. In the US, federal government work is statutorily free of copyright, although the law rules for the output of individual states is not yet settled. If third-party work appears in an authorized form online, links can often be substituted for reprints without compensation. Care should be taken, however, not to send students to unauthorized, infringing documents as this may constitute an infringement itself. Many works, including useful images, online videos, public documents, and more are available on a public domain, open source, or creative commons basis, and using them

strategically can avoid headaches. Furthermore, fair use provides a perfectly legitimate avenue for incorporating portions of works and even whole works in a relatively spontaneous classroom setting. Unfortunately, fair use is generally decided based on the balance of a number of variable factors, which means there is no bright-line rule defining fair use. In an online setting, where interactions are recorded, preserved, and often repeated for multiple audiences, what would be fair use in a residential classroom setting might become a violation. Courts have yet to provide much guidance of the application of fair use principles in the virtual classroom. Note that many publishers hold different standards for works posted online as opposed to works simply photocopied for in class use.

Moreover, copyright is not the only concern for clearance. Depictions of third-party individuals can raise concerns of privacy, publicity, and defamation. Trademarks should not be referenced in ways that might create infringing confusion or that are unlawfully dilutive.

Optimally, decisions on third-party materials should be made early in the design process of a course so that last-minute scrambles and panics are avoided. In the asynchronous context, the instructional designer is a natural advisor for systematic thinking on this issue, and can help to curb the sometimes naïve enthusiasm of the faculty involved. Of course, some questions will crop up during implementation of the course when teaching faculty or students post materials. Training for both of these populations should aim to increase their sensitivity to these constraints. Luckily, federal law immunizing internet providers may give some protection to the course provider for infringing posts made by students, although this protection may require quick responses and take-down actions by the course provider. Agreements with students and faculty should give the provider full authority over the course website, including the power to remove infringing or offensive material.

Recommended Practices

When considering intellectual property concerns schools should:

1. *Develop clear expectations around instructor-generated products and instruction.* Before beginning course design, schools should determine whether a professor or institution holds intellectual property rights for course content, and if so, the exact nature of those rights. Contracts setting forth those rights should include provisions for updating courses and the rights of the faculty members when they leave the institution.

2. *Communicate ownership of student work.* Before the course starts, institutions should develop policies delineating the ownership of work created within an online classroom, particularly work created through student collaborations. Online instructors should not reproduce, distribute, or incorporate student work except with permission or within the defense of fair use.

3. *Carefully note ownership of third-party work, particularly in electronic forms.* Copyright attaches to all original work fixed in a tangible format, including digital documents. When using copyrighted materials, schools must conform to the T.E.A.C.H. act, which specifically addresses distance education content as well as standard copyright provisions.

Chapter 9

Professionalism Online

More and more, law and legal practice are moving online. Appropriate online behavior, including the concept sometimes called *netiquette*, has become an important aspect of professionalism.

A sample Online Behavior Policy is attached in Appendix E of this document. It is important for an institution to have a robust online etiquette policy that outlines appropriate and inappropriate behavior, and that articulates expectations and penalties. Some programs find themselves stymied early on when behaviors which would typically be checked interpersonally in a residential setting become problematic in the online space. Developing immediate responses and providing avenues for redress is a critical aspect of developing a respectful and resilient program.

This chapter addresses:

- *Asynchronous courses.* How can institutions guide students in practicing professional written discourse within an asynchronous course?
- *Synchronous courses.* How should institutions model, teach, and evaluate appropriate live visual or audio interaction in synchronous settings?
- *Faculty and instructor online behavior*. The permanence of recorded sessions and written material present a risk that instructors or students may be perceived in a less than ideal light. How can institutions promote professionalism on the part of teaching staff?

Asynchronous Courses

Asynchronous delivery of online courses can be both beneficial and challenging, giving students a chance to reflect outside of the real-time classroom setting, but it also requires students to have stronger time management skills to effectively interact with their peers. Knowing the proper contacts for technology and course content questions and familiarity with the technology being used are both imperative for working within the parameters of an asynchronous course.

In general, the asynchronous course model can be viewed as a precursor to the student's professional life, with the sort of email and other electronic communications and the responses, deadlines, and interactions they will experience in practice taking place on a less-structured level than in a synchronous course.

Synchronous Courses

Students in regular law school classes generally govern their behavior by adhering to widely recognized norms. For a few students, these norms do not automatically carry over to synchronous online classes. In these cases, no longer guided by conventional classroom norms, they comfortably and regularly engage in

on-camera behaviors that significantly distract others in the class. These behaviors are particularly disruptive in synchronous classes because they are visible to other students and to the instructor. Because of the medium, they call attention to themselves and away from class discussion and focus. Some examples are distracting background noise, activity by other people in the room such as children, or on-camera reactions like eye rolling, which would not be visible to most students in a live classroom setting.

Communication

Faculty have an important role in modeling appropriate online behavior. As communication is integral to an effective learning environment, it is important that instructors model effective, respectful, and professional communication skills and engage with students in a manner conducive to positive student-faculty interactions. Humor, criticism, and sarcasm that might work well in person can be misunderstood online, especially if the medium of communication is limited to text. Faculty can be part of the problem when communication challenges occur, but they can also be the primary solution to those issues. Training and awareness exercises can improve faculty abilities in these areas.

Recommended Practices

When developing an online program, administrators should consider setting standards of professional behavior for students and faculty. In most cases, a reminder of professional behavior practices will be enough to ensure a respectful and productive environment. Consider the model policy in the appendix. In addition:

1. *Asynchronous classes require careful thought before writing.* Institutions should consider establishing response-time and etiquette requirements for all students and faculty in distance learning courses.

2. *Synchronous classes.* Synchronous classes present an opportunity for institutions to remind students that appearances, manners, and interpersonal communications are each aspects of professionalism.

3. *Faculty and instructors bear responsibility for creating a professional environment*. Institutions should encourage faculty and instructors to consider the online environment in which they are teaching and how elements of professionalism manifest themselves in that context.

Chapter 10

Accreditation and Regulation

An institution launching an online, or partially online, law program must be aware of the impact of accreditors and regulators. An institution should contact a parent institution's compliance officer or general counsel, or appoint a faculty or staff member to monitor these issues. Full compliance can be a rigorous and expensive undertaking and should not be underestimated. This paper does not attempt to address all compliance issues comprehensively, but calls the reader's attention to several important areas.

This chapter addresses:

- *Accreditation and education authorization*. A variety of accreditors, including but not limited to the ABA, regional and state accreditors, and specialized distance learning accreditors may have jurisdiction over distance learning programs. How will you ensure that your distance program obtains or retains accredited status as you deliver online courses or programs?
- *Other regulation.* How will your school prepare to follow and comply with the variety of evolving state and federal regulations? How will regulations that were written for residential populations be modified for distance learning populations?

Accreditation and Education Authorization

Accreditors

The US has three types of accrediting agencies: Those recognized directly by the US Department of Education (DOE); those recognized by the Council for Higher Education Accreditation[29] (CHEA), which is aligned with the US DOE) and state accreditors or regulators. Accreditation by a recognized accreditor under DOE or CHEA is required for an institution to be eligible to accept federal student aid funds. For traditional on-campus programs, state authorization outside of the institution's locational state is not required for federal student aid funds.

Specialized Legal Accreditors

Recognized by DOE, the American Bar Association provides direct accreditation to law schools in the United States. Most states only allow graduates of ABA accredited schools to sit for the bar exam and become licensed to practice law. As noted elsewhere in this paper, the ABA currently provides significant limitations on distance learning courses within the JD curriculum. The Distance Education Accrediting Commission (DEAC), until recently known as the Distance Education and Training Council (DETC), has a long history and specialized expertise in accrediting distance education programs. Like the ABA, it has authority from the Department of Education to accredit first professional degree programs leading to the

[29] CHEA is aligned with the US Department of Education.

JD degree. In addition to the ABA and DEAC, the American Association of Law Schools, a membership organization representing most US law schools, has standards for membership that currently do not directly address distance learning within the JD curriculum.

Regional Accreditors

Recognized directly by the DOE and CHEA, six regional accreditation organizations govern most current distance learning programs offered by law schools. Regional accreditors have taken the lead in goals and assessment based education, and while different regional organizations have different thresholds, the pedagogical requirements identified in this paper respond to the trends and requirements of these accreditors. Those accreditors are:

MSA - Middle States Commission on Higher Education

NASC - Northwest Association of Schools and of Colleges and Universities

NCA - Higher Learning Commission of North Central Region

NEASC - New England Association of Schools and Colleges

SACS - Southern Association of Colleges and Schools

WASC - Western Association of Schools and Colleges

State regulators

Distance learning programs may also be subject to review by state departments of education or other state agencies in those states in which those programs have some sort of physical presence. What counts as a physical presence varies from state to state. Some states regulate only those with a bricks-and-mortar presence. Others look at a variety of factors even if no bricks-and-mortar presence exists, including whether the school is a non-profit or for-profit; whether the school has an internship or externship presence within state; the presence of adjunct faculty within state; whether there is state-specific advertising; and whether there is physical recruitment presence within state.

The consequences of a physical presence or lack of physical presence also vary. In some states, if a school does not have a physical presence, there are no particular applications or forms the school needs to fill out in order to offer distance learning to students residing in that state; in other states, the school needs only to file a letter of intent describing the non-qualifying program. At the other extreme, a finding of physical presence means the institution must file an application to the appropriate authority within the state accompanied by, variously, a significant application fee, the posting of a bond, or program-by-program fees.

This patchwork regulatory quilt has led to a movement to develop a regional and national reciprocity process in which an institution that has state authorization in its own state will receive authorization in reciprocating states. The agreement, named the State Authorization Reciprocity Agreement (SARA), has reached a consensus on minimum standards and is now being processed by the regional entities. SARA is administered by four regional education compacts: Midwestern Higher Education Compact (MHEC); New England Board of Higher Education (NEBHE); Southern Regional Education Board (SREB) and Western Interstate Commission for Higher Education (WICHE). At this writing, 36 states have joined

SARA and it appears that SARA will dramatically simplify the state authorization process. For now, however, an institution needs to proceed on a state-by-state basis for all states if the institution is not participating in its home state's SARA program. And even if the institution is participating in SARA, it will have to get authorization on a state-by-state basis for non-SARA states. If an institution is located in a non-SARA state, the institution must proceed on a state-by-state basis for all fifty states.

Other accreditors

Distance learning programs and institutions can be reviewed and accredited by a variety of specialized organizations with expertise in distance education. Most ABA schools have not yet pursued DEAC accreditation, but several international organizations accredit distance learning programs in their country or region of origin. These include:

Open and Distance Learning Association of Australia (ODLAA)

Norwegian Association for Distance Education (NADE)

European Distance Education Network (EDEN)

The Commonwealth of Learning (COL)

Canadian Association for Distance Education (CADE)

Institutions

While accreditors set some policies governing distance learning programs, during this growth phase individual institutions should take responsibility for most program development. This serves the purpose of ensuring program integrity and positions a program for the various types of distance accreditation or regulation that may be enacted at any time.

Other Regulation

Institutions must continue to keep abreast of other regulations, including Family Educational Rights and Privacy Act (FERPA) and Americans with Disabilities Act (ADA) regulations for distance education programs. The different modes of delivery, calendaring, and other differences in online education require a reexamination of the regulatory requirements for both compliance purposes and to provide to accreditors should they request that information as part of the accreditation process.

What are an institution's obligations under other federal and state regulations? Be aware of Cleary Act obligations and emergency notification requirements for example. Do not make the assumption that just because your students are not on campus or not on campus as often, your compliance responsibility is lessened. It is prudent to double check all regulations in light of your distance education program.

Recommended Practices

1. *Accreditation.* Distance learning programs may require specialty authorization, variance, acquiescence, or other allowance by a variety of accreditors.

2. *Federal financial aid implications.* Distance learning programs trigger particularly tricky Title IV issues which should be addressed and revisited regularly.

3. *State authorization and the educational regulatory landscape.* Starting an online program often requires the registration of the school or program with the educational authority within each state. The rapidly changing US Department of Education and individual state authorization rules require constant vigilance, although SARA may ease some of the burden for member institutions.

4. *Responsibility for regulatory compliance.* A single individual should be assigned responsibility for ensuring compliance with the complex and changing landscape of distance learning regulation. This person should have access and authority to direct a variety of offices across campus to comply with appropriate regulations.

Chapter 11

Business and Financial Models

The proliferation of electronic devices at virtually every level of society promises great potential for using those same devices in higher education. Many institutions have made forays into distance learning—some with excellent programs and dramatic success, and others with offerings considered rather bland by students. The latter were not particularly well received.

A wide variety of business and financial models can work for the creation and delivery of distance education, ranging from free distribution (generally without any attached assessment, certification or degree) to full-price degree programs. Within legal education, distance programs have so far been on a paid basis. Pricing models vary, but they generally reflect the same tuition structure as the rest of the school.

This chapter addresses:

- *Business case for distance learning.* How does a law school assess its ability to provide appropriate online programs?
- *Start up and ongoing financial models*. How should an institution develop budget models that account for launching and sustaining online programs with reasonable expectations for investment and returns?
- *Home-grown programs, third-party partners, and institutional partnerships.* When should an institution develop a program internally and when should it look to outside partners and investment for program development and support?

Business Case for Distance Learning

From both business and financial perspectives, the decision to offer distance learning should not be made lightly but rather should be based at the outset on a sound, complete, and well-supported business case. Setting forth and critically evaluating all factors of the proposed venture, including the strengths, weaknesses, opportunities, and risks associated with the proposed offerings, and providing well-supported revenue and cost projections will help the school accurately evaluate both the fit and opportunity of the proposal. Of particular import are the potential costs associated with establishing or enhancing the Information Technology (IT) infrastructure and the supporting personnel needed to ensure seamless delivery of programs.

For institutions that already have robust systems and expert IT personnel, program development, testing, and rollout should be readily achievable and affordable, both in financial and personnel terms. Implementation will cost more for an institution lacking experts, experienced personnel, and a fully functional, integrated, well-tested and adequately staffed IT infrastructure. It is worth noting that, in

general, effective, quality IT systems, personnel and related resources do not come without significant cost.

ABA Standard 202 governs resources necessary to maintain law school programs, requiring that resources available to the law school be "sufficient for it to operate in compliance with the Standards and carry out its program of legal education" (202(a)).[30] Indeed, the ABA standards speak to the importance of adequate resourcing for J.D. programs, including sufficient office space for support staff. Standard 701 states that law schools shall have "facilities, equipment, technology, and technology support that enables it to operate in compliance with the Standards and carry out its program of legal education," and further notes that schools are not in compliance if facilities, technology, equipment, or tech support have a "negative and material effect" on the school's ability to be in compliance or to carry out its pedagogical mission.[31]

It is important to remember that a library and library information resources are necessary to service distance learning populations. New courses and programs incur costs—sometimes overlooked when planning—related to the growth of library support services, databases, and reference materials needed to support the new program.[32]

Start up and Ongoing Financial Models

As noted, development of credible and legitimate online programs requires more than simply an instructor, a room, and a YouTube channel. Modeling realistic costs and setting reasonable expectations for initial investments and returns is critical to appropriate funding and growth of online programs.

Modeling start-up costs

When modeling the initial cost of a startup program, be it an individual course or a full online degree program, institutions should anticipate an upfront investment in appropriate learning technology, course development, instructor and student training, and administrative systems development. These initial investments will be needed in the first year of operation or even earlier, and will probably not be recouped for several years. These initial investments typically require more than $100,000 in investment or operating capital. Industry experts suggest that the breakeven point on a new program is seven years, on

[30] ABA Standard 202(b) also states that for law schools that are part of a university should obtain annual (or more frequent) reports that provide "an accounting and explanation for all charges and costs assessed against resources generated by the law school to support non-law school activities and central university services."

[31] Of note is Interpretation 701-1, which states: "In determining whether technology and technology support comply with this Standard, among the factors to be considered are:

> (1) the hardware and software resources and infrastructure available to support the teaching, scholarship, research, service, and administrative needs of students, faculty, and staff of the law school;
>
> (2) staff support and space for staff operations; and
>
> (3) the law school's financial resources and overall ability to maintain and, as appropriate, adopt new technology."

[32] See ABA Standards 601-606.

average.[33] Due to many variables inherent in legal education, return on investment can vary. However, many institutions underestimate the length of time necessary to generate net profits.

One mistake schools sometimes make is to assume that programs can use existing personnel to build and administer online programs. Where enrollments are declining, a presumption that staff can be easily shifted from serving traditional populations to online populations seamlessly may or may not be true. If adjustments have already been made for the decline, there may, in fact, be no excess staff capacity. The schools must rethink all business systems, including the complex issues accompanying any start up, and the addition of service hours that accompanies expansion into online and evening learning. In some cases personnel may be shifted, but often additional personnel and expertise will be required. Budgeting for new personnel and retraining of existing staff is critical to program success.

Modeling Ongoing Programs

Once a program is developed and established, the school must still allocate sufficient funds to improve, update, and maintain it. Course curriculum should be reviewed and updated before each offering. Even mundane upkeep, like updating copyright permissions, must be included as part of regular course refresh budgets. Technological improvements, including updating as available ADA accommodation capacity improves, and training for faculty and staff on all improvements and updates, must be integrated into ongoing budgets for a program.

Creating budgets for freestanding programs and integrated programs

Because distance learning programs of any size require upfront investment, institutions will wish to track the return on investment. Often institutions will create a stand-alone budget for the distance learning program, accounting for tuition revenue in and expenses out to calculate gross profit—effectively placing the distance learning program in a box. The elegance and simplicity of the box is tempting for some administrators. However, sufficiently accounting for overhead is tricky in such models, and by tucking all expenses into a single stand-alone budget, there are risks that economic incentives for action by other departments to support distance learning activities will be diminished.

Conversely, distance learning activities can be budgeted as line items within appropriate departments, effectively integrating the budget of such programs across the institution. In this case, accounting measures should be taken to ensure that the distance learning costs can be separately tracked and evaluated so overall investment and return can be analyzed. This is complicated, and adding new lines within all business units is expensive and cumbersome. However, integrated budgets will ensure that all departments focus on distance learning initiatives as part of their function and have incentive to do so. Isolating the budgets can make it difficult or impossible for distance learning students and programs to get the services and support they need.

Tracking and accounting for overhead

Tracking overhead across departments can be a matter of philosophy as well as resource allocation. Dedicated services, including specialized personnel such as full-time admissions staff, financial aid staff,

[33] A.W. Bates and A. Sangra, Managing Technology in Higher Education (2011) at 138.

and IT staff, should be identified as a shared resource, and these resources must be allocated. For example, a percentage of library resource use related to the program can be calculated, but overall footprint allocation is much more nuanced. In general, full accounting of anticipated overhead may make projects appear far less lucrative than institutions hope because start-up costs are high.

Home-grown programs, third-party partners, and institutional partnerships

In developing and implementing a high-quality, effective distance learning program, schools must take care that the course curriculum, services, and resources are comparable in quality and level of interaction to those experienced in the traditional on-campus environment. This should serve to attract both students and faculty to the program and enhance the reputation of the institution as a leader in superior, innovative legal education, providing an appealing alternative to the traditional campus-based experience.

To fully realize their potential, distance programs, whether synchronous, asynchronous, or blended, need to be approached as sui generis forms of instruction. While the electronic medium does offer opportunities for economies of re-use, scale, and personnel deployment that can create savings both for the students and the course providers, those opportunities should not be exploited in any way that would diminish the quality of instruction or the interactions between students and instructors. Doing so undermines not only the intent of the offerings but potentially the reputation of the institution.

Before an institution chooses to go forward with a distance learning program, it should create a budget that is both grounded in the business case and based on the approach it wishes to adopt. The activity categories described in this Working Group Paper can provide a starting point for expenditure categories. It is reasonable to anticipate that start-up capital requirements may be substantial—well into the six figures—if a robust and capable IT infrastructure is not already present and fully functional. Given the strains on law school budgets and lack of expertise in this area, partnering with an outside vendor that has expertise in online delivery may be critical to a credible, seamless delivery.

Outside vendors, university vendors, and home-grown options

One area where there is considerable variation is how much use should be made of outside providers. The technological, support, recruitment and servicing needs of a good program can benefit from economies of scale, and there are a number of companies that offer a full complement of services to address these needs. These companies have already made capital investments that will lower the financial entry barriers for individual schools. Making the right decisions around what functions to keep in house and what to outsource, along with the compensation models for such outsourcing, is a critical part of the business case for distance learning and a key precursor to a successful program. Many vendors offer a suite of services for online programs that can include market research, program readiness assessment, marketing for the program, compensation for instructors, instructional design, student recruitment, program management, student retention, hosting the learning management system with or without attendant IT services, quality assurance, and providing help desk services (24/7 or otherwise). The suite of services can be purchased on an a la carte basis, or through a revenue sharing arrangement. It is important to recognize that vendors will only move forward with a partnership if they believe that there is a market for the proposed credential and the given institution is in a position to successfully implement the program. Prospective partners will do a thorough market analysis before agreeing to move forward. A thorough and well-supported business case, as discussed above, is critical to providing potential vendors with the information they will need to

properly evaluate the proposed program and assess whether it is both an appropriate fit and a good business proposition for them.

Once a market assessment has been done, the vendor will produce a pro forma budget that incorporates assumptions regarding program growth based on the market research. This budget projects the bottom line revenues to the institution. The two key variables are student numbers and revenue split. For a full turn-key suite of services, fees paid to the vendor can appear to be quite high—as much as 85% of gross revenues. In these instances, however, the vendor is taking the bulk of the risk and providing virtually all of the up-front investment. Institutions may be able to negotiate different payment terms, such as a sliding scale revenue share, in which the institution retains a larger percentage of the revenue if agreed-upon growth targets are met. Alternatively, the school may negotiate a reduced package of services, excluding some services that the institution can handle itself, such as course production.

When negotiating vendor contracts, most institutions provide for the inclusion of an opt-out provision permitting the institution to withdraw from the contract without penalty should the program fail to reach agreed-upon deadlines or financial targets. The process of establishing a partner relationship can take months, and once a partner and vendor have agreed to terms, the lead time for launching a program is typically eight months or longer. When contracting, it is important to define the degree to which the vendors will have responsibility for administrative work and what specific tasks they will be responsible for.

Institutions must establish an internal administrative team devoted to the distance learning program, if it is to be scaled to any considerable size. This will include a Director, presumably a faculty member or someone with senior administrator status, and a Program Coordinator to run the day-to-day operations. Existing administrative staff in IT, the library, financial aid, admissions, student services, billing office, registrar, career services, and academic support should also be prepared to assume some responsibilities for work related to the distance learning program. Additional hiring may also be necessary, depending upon the anticipated size and scope of the program.

Partnerships with other institutions

Law schools may also explore the possibility of partnering with other schools to deliver distance learning programs. This can range from licensing arrangements for specific courses—which may reduce course production costs or maximize students' ability to access professors' expertise —to agreeing to a joint degree program offered with another institution. For example, one model of sharing courses follows a fairly straightforward structure: the curriculum committee at the partner institution accepts courses at the host institution as part of its course catalog, and then the partner institution registers its students in those courses and collects tuition from its students. The courses and grades appear on the student transcripts at the partner institution. The partner institution also solely administers all student aid for its students. From the opposite perspective, the host institution receives the list of registered students; provides course content, instruction and assessment; provides course grades to the partner institution; and invoices the partner institution based on the agreed-upon financial model. Another model could include a revenue-neutral course swap between two or more institutions. There are also institutions actively considering entering into consortiums to achieve economies of scale while still providing a superior educational experience for members.

Recommended Practices

Develop a realistic business model. Ensure that business plans provide sufficient investment capital for adequate staffing and program development and that they predict reasonable return rates.

1. *Choose a development path.* Programs can be built in-house, by outside vendors, or in partnership with other law schools. The appropriate path will depend on available investment capital, expected rate of return, and other institutional factors.

2. *Carefully choose third-party vendor relationships.* Because of the variations in bundles of services and the potential regulatory tripwires of working with third-party vendors, contracts with outside partners should be carefully vetted, with particular attention to both investment control and opt-out provisions.

Chapter 12

Conclusion

Distance learning is already an established element in most fields of education. While legal education has lagged behind other disciplines, adoption is likely to accelerate in the next few years in light of relaxed standards by the ABA and the ABA's affirmative invitation to schools to submit variance proposals. These two factors will encourage experimentation with distance learning and alterative modalities of legal instruction. As more and more law schools consider how to create a good program of distance education—whether in the JD context or focusing on other degrees—the creation of a set of recommended practices that will contribute to a quality result becomes a matter of some urgency.

This paper seeks to provide the background, specific analysis, and suggestions to fill this need. As the product of a collaborative conversation among many of the schools currently most active in the field, we believe that this paper provides a balanced discussion and a set of recommended practices that can be helpful both to schools with existing experience and to those just starting a distance education program. While no treatment of this length can pretend to be exhaustive, we do believe that we have addressed much of the terrain that a good distance education program needs to master if it is to succeed both educationally and financially.

As with any attempt to provide analysis and advice about a moving target, we recognize that this paper will begin to be out of date the moment it is released. We anticipate that there will be additional iterations of the paper, and we hope that the Working Group will continue to be a forum where the best policies and practices for distance education in law can continue to be hashed out and disseminated. Rather than only updating this resource periodically, we hope to provide shorter guidance documents, model policies, and other helpful materials as the legal education technology, regulation, and practice evolves and matures. We welcome additions to our group; contact information is available on the cover pages.

In closing, the authors wish to thank the Harvard Law School Center on the Legal Profession for its intellectual leadership, convening ability, and willingness to sponsor the efforts of the Working Group for its first few years. We also wish to acknowledge the generosity of the eight schools who have hosted our semi-annual meetings and informational breakfasts at various Association of American Law Schools (AALS) annual meetings. Finally, we thank CALI for sponsoring the publication of this second iteration of recommended practices for distance learning programs.

In a time when higher education, legal education, and the legal industry are in considerable transition, distance learning is one small piece of a large, creative and inventive tool set deployed by visionaries to

move law schools into the new century. While the collective authors of this document wish to provide information and make recommendations for good practice, we all recognize that experimentation, variation, and disruption are inevitable. To all schools, faculties, and deans looking down the road toward an uncertain future, we charge you with the words of Peter Drucker: *The best way to predict the future is to create it.*

Appendix A

Model Standards for Distance Learning for Legal Education

As an increasing number of law schools implement distance learning courses—as well as entire distance learning programs—an increasing number of schools and administrators request guidance and standards. These model standards set forth recommended practices for providing student services and ensuring student engagement and interaction for directors, deans, administrators, and faculty that are involved in developing, administering, and supporting these distance learning programs. In addition to online teaching standards, these policies set forth key aspects of programs including student services, access to information, distance learning student registration, financial aid, billing, and accounting, career services and scheduling, alumni relations, accessibility, academic advising, and technology.

Standard 1. RESOURCES FOR PROVISION OF STUDENT SERVICES

Standard 1.1
A school must maintain an adequate infrastructure for distance education, including, but not limited to, staffing, technology, and infrastructure sufficient to meet the needs of distance learning students and the faculty and staff that serve them, and system security sufficient to adequately protect/prevent release of sensitive, confidential information.

Standard 1.2
The infrastructure for the provision of student services for distance education should be sufficient to provide a level of service that is of equivalent quality, though not necessarily identical, to those provided for residential post-JD students in comparable degree programs.

Standard 1.2 Interpretation
Resources accessible to online students should include, at minimum, the following:

(A) *An online admissions process that has effective (as tested) fraud protection but provides applicants the ability to electronically sign their admissions application and enrollment agreement.*

- *Real-time communications with applicants utilizing Skype, Facetime, or other live video enabled communication platform may be used to verify English-language ability of foreign students.*

(B) *Financial aid application assistance by a trained Financial Aid officer for students who may be eligible.*

(C) *Secure systems for course registration, billing and accounting, and posting of grades.*
- *Secure student access to registration, billing and accounting, grade information, and applicable forms, preferably via an online portal*

- *Online forms are the norm in distance learning and should be used when feasible.*

(D) *Online library and legal research resources that are adequate for the student's academic program, and training on how to use them (e.g., through Webinars, LibGuides, etc.).*

(E) *Sufficient interaction between professor and student to meet mandated interactivity requirements (where applicable), optimize learning and facilitate assessment (e.g., tutorials in asynchronous and hybrid courses, online chat sessions, Ask Your Professor discussion forum), as well as meet all relevant mandated interactivity requirements.*

(F) *Technical support available to students and faculty 24/7. For hybrid classes, technical support should, at minimum, be available during all synchronous instruction times and times when students are likely to need support (e.g., exams or projects).*

(G) *Career services and counseling resources.*

(H) *Academic advising resources, including but not limited to:*

(1) *Writing clinic;*
(2) *Advising appointments by phone, Skype, FaceTime, webinar or other "face-to-face" interactive technology;*
(3) *Academic success program participation;*
(4) *Alumni mentoring; and*
(5) *Subject matter tutoring.*

(I) *Online textbook ordering and textbook information for those courses requiring the purchase of textbooks.*

Standard 2. ACCESS TO INFORMATION

Standard 2.1
A school must provide distance learning students with access to information that is comparable to information provided to residential students and sufficient for the smooth functioning of the distance education program.

Standard 2.2
A school must provide detailed orientation for new distance learning students, addressing how to access all aspects of the distance learning experience, including but not limited to, school policies and procedures, program–specific policies and procedures, student services, applicable program policies and procedures and other available programs.

Interpretation 2.2.1
Information may be provided to students in a welcome letter, in an online orientation program, and/or in a student handbook made accessible to the students.

(A) *Welcome Letter. A welcome letter to admitted students should indicate how to access the orientation program, any supporting materials, and the student portal where information can be accessed. The welcome letter may also include:*

(1) *Notification to students on how to obtain a hard copy of an acceptance letter (some employers need this).*

(2) *A link to an "Intent to Enroll" form confirming a student's acceptance of the offer, terms and conditions of admission, intended start date, and whether they intend to secure financial aid.*

- *The "Intent to Enroll" form should be signed by the student and should include acceptance of the school's term of enrollment, which should be made available on the school's website.*

(3) *Reference to the student Code of Conduct and an acknowledgment that the student has read and agreed to abide by them.*

(4) *A link to the Financial Aid forms, including FAFSA, Entrance Loan Counseling and Master Promissory Note, along with deadlines for completion and contact information for assistance.*

(5) *Notification to students that they should expect to receive an email from the Technology Department creating a school email account and instructions on how to set the password.*

(B) *A school should provide a robust online student orientation program, specifically targeted to the online learning community and sufficient to ensure that the student has all of the necessary tools and equipment to succeed in an online class.*

(1) *Attendance and completion of orientation should be required prior to commencing studies.*

(2) *Orientation may be synchronous or asynchronous, but a record must be kept of student attendance and completion of the orientation program.*

(3) *Orientation should cover, at minimum, the following topics:*

(a) *Policies regarding student conduct;*
(b) *Curriculum and degree requirements;*
(c) *Course registration;*
(d) *How to apply for financial aid, and all applicable deadlines;*
(e) *How students will be billed for tuition and fees, and how to make payments;*
(f) *Policies on withdrawal from courses and from the program (including tuition refund policy), and requirements for leaves of absence;*
(g) *How to set up a school email account, and what it will be used for;*
(h) *A warning to check school email regularly for course and billing related communications; federal privacy laws require use of secure email for official communications.*
(i) *How to obtain a student ID;*
(j) *How to obtain information about available courses;*
(k) *How to order any required textbooks;*
(l) *How to access the academic calendar and class schedule for their courses;*
(m) *How to access library resources and set up accounts with Lexis, Westlaw, and other providers;*
(n) *The required technology for accessing the classroom;*
(o) *How to access the 24/7 help desk and how to get help in case of a technology problem;*
(p) *How to obtain academic advice;*

(q) *How to obtain career counseling and job placement assistance;*
(r) *Contact information, including the availability of counseling in case personal issues interfere with their studies.*

Standard 2.3
A school should provide distance learning faculty with sufficient access to all information they require to perform their duties.

Interpretation 2.3.1

(A) *A school should provide adequate training, orientation, and supervision to online faculty so that they have access to all information they need.*

(1) *Training should include both how to use relevant technology, how to address/resolve frequently encountered technical/system issues, and the pedagogical aspects of online teaching.*

(2) *Training should be provided in sufficient time before the faculty member begins teaching to permit the faculty member to utilize the platform, achieve a reasonable level of comfort, and have all questions answered and issues addressed.*

(B) *A school should implement a plan for monitoring and evaluating the performance of online faculty so they have adequate feedback; and to ensure that online faculty who fail to perform adequately are provided with the tools to improve performance.*

Standard 2.4
Academic policies and procedures governing distance education should be clearly articulated and made accessible to all students to whom they apply.

Interpretation 2.4.1

(A) *The Student Handbook should be readily accessible online and new students should sign an acknowledgment that they have reviewed it and agree to comply with it before being permitted to start the program.*

(B) *The Handbook should be introduced in a welcome letter and explained in orientation.*

(C) *The Handbook should include all major policies applicable to the program, in easily accessible and searchable form.*

Standard 2.5
Academic policies and procedures, including the applicable Code of Conduct, should be tailored for the distance learning environment and cover the kinds of misconduct that are known and/or reasonably foreseeable in a distance learning environment.

Interpretation 2.5.1

(A) *The Handbook should include a Student Code of Conduct with particular emphasis on the Honor Code for Academic Integrity and Honesty and a list of Prohibited Conduct and Violations. (e.g., Plagiarism)*

(B) *The Code of Conduct should cover prohibited online conduct such as bullying, flaming and hacking.*

(C) *A school should maintain adequate policies to protect its intellectual property rights in content made available to online students, and should use technological and other means to prevent online students from unauthorized copying and misuse of that content.*

Standard 3. REGISTRATION FOR DISTANCE LEARNING STUDENTS

Standard 3.1
Distance learning students should have access to a registration process that, to the extent feasible, is comparable to the process of registration for residential students, and that adequately protects their rights as consumers in choosing courses.

Interpretation 3.1.1

(A) *Adequate information should be made available to students at the time of registration for them to make an informed choice of courses.*

(B) *Adequate time prior to the commencement of classes should be allowed for students to register for classes and purchase any required textbooks or materials.*

(C) *Students should be permitted to drop courses without charge during institution's standard "Add/Drop" period.*

(D) *Registration forms should be available online and electronic signatures on online forms should be accepted, using e-sign technologies that are widely available, so as not to disadvantage online students. Examples of online forms include but are not limited to Leave of Absence, Course Withdrawal, Program Withdrawal, Deferment, Credit Transfer, Request to Graduate, Intent to Enroll, and Enrollment Agreement.*

Standard 3.2
Registration information should be promptly communicated to faculty and reflected in the learning management system (LMS).

Interpretations 3.2.1

(A) *LMS's should be set up to interface with registration systems so that registrations and withdrawals are reflected automatically in the LMS.*

(B) *Withdrawals not communicated to faculty can result in faculty spending time on assessment and monitoring of students who are no longer enrolled. LMS's and/or registration systems should include emailed notifications to faculty of withdrawals and late registrations.*

(C) *Unregistered and withdrawn students should be denied access to the LMS.*

(D) *Guest registrations may be permitted with an administrator's consent if there is a valid academic purpose but only if security protocols are followed.*

Standard 4. FINANCIAL AID, BILLING, AND ACCOUNTING

Standard 4.1
Financial aid, billing and accounting practices should be adapted for distance learning students so as to alleviate the disadvantages caused by not being on campus.

Interpretation 4.1.1

(A) *Dedicated personnel should be made available to assist online students with their Financial Aid application forms to the same extent that such assistance is provided to residential students.*

(B) *Students should be able to access their anticipated financial aid award and billing statement.*

(C) *Students should have the option of paying tuition online.*

(D) *Students should have access to a secure link with appropriate security protocols in place (e.g., password, CAPCHA) to provide a Social Security number to obtain 1098-T information.*

(E) *Students should be able to update their contact information online and should be warned of the possible consequences of failure to keep it up to date.*

(F) *Contact information should be provided to online students who believe there has been a billing or accounting error.*

(G) *Financial Aid practices should be divorced from admissions and enrollment to the same extent as they are for residential students.*

Standard 5. CAREER COUNSELING AND PLACEMENT SERVICES

Standard 5.1
Career counseling and placement services should be made available to meet the needs of distance learning students that are comparable to the services provided to residential students, to the extent feasible. Distance learning students should not be discriminated against because of their status.

Interpretation 5.1.1
Any limitations on career counseling and placement services made available to online students relative to those available to residential students should be fully disclosed in advance prior to a student's commencement of the program.

(A) *For example, if placement services are not provided to online students, or if placement services provided to online students do not cover certain regions, this information should be disclosed.*

(B) *Career counseling and placement services for online students should be provided by persons experienced or trained in the provision of these services, to the same extent as for residential students.*

Standard 5.2
Career counseling should be reasonably adapted to the distance learning medium.

Interpretation 5.2.1

(A) *Effort should be made to overcome geographical limitations through the use of online databases, alumni networking, and invitations to alumni events.*

(B) *Relevant job opportunities should be posted and publicized in a medium that is accessible to online students.*

(C) *Schools offering online programs should take advantage of their technology to facilitate serving students in geographic areas remote from the school.*

(1) *For example, video conferences and Webinars with recruiters knowledgeable about particular job markets might be offered both live and in recorded form.*

(2) *Similarly, career counselors can take advantage of Skype and Web conferencing where necessary to avoid undue cost to students in other countries who are seeking assistance.*

(D) *Career counseling and placement policies and advice should be included in an online manual available to students. This should include advice on resume preparation, interviewing, and identifying job opportunities.*

Standard 6. SCHEDULING

Standard 6.1
Scheduling should take advantage of the distance learning medium, for example by offering multiple starting points and asynchronous class options.

Standard 6.2
Scheduling of classes should accommodate the needs of distance learning students who are employed, have familial or other critical obligations, or are situated in different time zones.

Interpretation 6.2.1
Synchronous classes should be scheduled for times when the largest number of online students are likely to be able to attend.

(A) *If many students are located in the U.S., late afternoon/early evening starting times (in U.S. time zones) should be considered. Where a significant number of students are located in the Eastern Hemisphere, early morning (in U.S. time zones) starting times should be considered.*

(B) *Weekend times should be considered for synchronous classes; however, bear in mind that students who have children in school may find weekdays preferable.*

Standard 6.3
Because many distance learning students have competing commitments such as family and work duties, class schedules and the dates and times of examinations and other assessments should be established well in advance, with adequate notice to registered students.

Interpretation 6.3.1

(A) *Class schedules and examination schedules, if any, should be posted online and made available to students at the time of registration.*

(B) *Absent an emergency, not less than one week's notice should be given of exceptions and changes to the class schedules.*

Standard 6.4
While one of the advantages of distance education is flexibility in the number and frequency of entering points for students to begin their studies, scheduling should allow adequate time between terms.

Interpretation 6.4.1

(A) *Adequate time needs to be left at the end of the term for assessment, for example, open-book exams or completion of term papers.*

(B) *Terms should be scheduled to allow sufficient time after the end of the term for grading and posting of grades, SAP review, and completion of registration for the following term. Normally this requires a minimum of two weeks between terms.*

Standard 7. ALUMNI RELATIONS

Standard 7.1
Distance Learning alumni should be given the same opportunity to participate in alumni activities and events as alumni of a residential program, to the extent feasible.

Interpretation 7.1.1

(A) *Graduating distance learning students should be included in the alumni databases for purposes of fundraising and other activities. However, a separate distance learning alumni database should also be maintained to facilitate communications uniquely targeted to distance learning alumni.*

(B) *Graduating distance learning students and alumni should be encouraged to serve as mentors for other distance learning students in need of career contacts and advice.*

(C) *All distance learning alumni should be included in alumni events. Due to the distance factor, online events should be scheduled especially for alumni of the distance learning program.*

(D) *Online technology should be considered for use in general alumni events.*

Standard 8. ACCESSIBILITY

Standard 8.1
Online programs should be accessible to persons with disabilities, in compliance with applicable federal (ADA) and state laws.

Interpretation 8.1.1

(A) *Procedures and forms should be established so that online students in need of accommodations due to disability can obtain them.*

(B) *Any necessary forms should be accessible online, and electronic signatures should be accepted. (e.g., Disability Accommodation Request form)*

(C) *Online content should be made accessible for students with hearing and vision disabilities, to the extent feasible and required by law.*

(D) *The school should provide a dedicated counselor to assist students with accommodation requests, regardless of whether the students are online or residential.*

Standard 9. ACADEMIC SUPPORT AND STUDENT ENGAGEMENT

Standard 9.1
Academic support should be made available to distance learning students to an extent comparable to the academic support made available to residential students enrolled in similar programs.

Standard 9.2
Due to the challenges of maintaining student engagement in a distance learning program, especially if the program is asynchronous, a school should have an early alert system to identify at-risk distance learning students and provide timely intervention.

Interpretation 9.2.1
Each student's participation should be monitored on a weekly or biweekly basis.

Standard 9.3
Academic counseling should be made available to distance learning students by faculty or by staff who are knowledgeable about the subject matter of the program.

Standard 10. TECHNOLOGY AND STUDENT ENGAGEMENT

Standard 10.1
Distance learning instruction should significantly engage students and take full advantage of the unique benefits of the distance learning medium. Instructional technology should promote these goals.

Interpretations 10.1.1

(A) *Technology for synchronous instruction should allow the professor to see the students and the students to see the professor.*

(B) *Production values in recorded asynchronous modules should utilize the richness of the medium.*

- *Production values should be strong and include both lecturer and message.*

(C) *Consistent with existing research findings, recorded lectures should be delivered in pods of 5 to 15 minutes to keep students engaged and to limit bandwidth problems.*

(D) *Even in asynchronous courses, the student should be afforded a reasonable opportunity to interact with the professor and to ask questions.*

- *Weekly or biweekly tutorials or office hours can satisfy this requirement.*

Standard 10.2
Distance learning technology should be user-friendly.

Interpretation 10.2.1

(A) *The learning management system (LMS) should be both user-friendly and visually engaging.*

(B) *High-quality video and audio in recorded and live content are important in student retention.*

(C) *Technical problems can be a cause of low participation, which in turn leads to low retention. Adequate training must be given to students and faculty on how to use the LMS and virtual classroom. Use of a facilitator in synchronous classes to troubleshoot technical problems in real time is encouraged.*

(D) *800-number and Skype audio options should be available for students experiencing audio or connectivity problems.*

(E) *Asynchronous classes can achieve a "live and current" feeling through multimedia content, multiple links to other content, multiple formats, and questions for the student.*

Standard 10.3
Tech support for distance learning students should be available 24/7 or at the hours when students are most likely to need it, and such support should be prompt to respond and easy to access.

Standard 10.4
An LMS should include features that facilitate the monitoring of student participation.

Standard 10.5
To accommodate distance learning student schedules, technology for synchronous classes should enable such content to be recorded in a format that can be made available to students outside live class hours.

Interpretation 10.5.1
Recorded content should be resident on or transferrable to servers controlled by the school in order to avoid losing content in case the school decides to change technology providers.

Standard 10.6
A school should utilize an assessment system in its distance learning courses that includes adequate controls against cheating and plagiarism.

Interpretation 10.6.1

(A) *Controls against cheating should include verification of student identity through password protection and online proctoring or other verification method for timed examinations to ensure that the student registered for the class is the person taking the examination. (See Standard 306(g) and Interpretation 306-2, American Bar Association Standards for Approval of Law Schools ["ABA Accreditation Standards"].) Any fees or charges regularly imposed for online proctoring or other verification methods must be disclosed at the time of registration or enrollment. (ABA Accreditation Standard 306(g).)*

(1) *Verification of student identity may include the use of an online exam proctoring service such as Acxiom, Securexam, and Webassessor.*

(2) *This may be required by the Higher Education Act of 2008.*

(B) *Plagiarism checking must be done for at least a sample of submitted assignments. Checking should include the use of systems such as Turnitin and SafeAssign (Lexis Web Courses) and integrated into the LMS.*

Standard 10.7
The LMS should interface in real time with the school's registration and accounting systems.

Appendix B

Start Up Checklist

BASIC LIST OF KEY PLANNING ELEMENTS FOR DEVELOPMENT AND IMPLEMENTATION OF A DISTANCE LEARNING PROGRAM IN ABA ACCREDITED LAW SCHOOLS

	Subject Area	Task	Details
Program Governance & Management	Program Director	Define Position	Define scope and lines of authority, duties, role and overall place in the organizational hierarchy Designate lines of reporting (Deans, Directors, University technology group, learning center on campus) Define responsibilities (for program design, teachers, reporting, etc.) Identify cross-institutional authority lines
		Conduct Search Process	Initiate search for fully qualified Director for Distance Learning Program. Ensure mandatory search parameters include experience working in an academic or similar environment; successful project management working with multi-disciplinary teams and experience/familiarity with aspects of distance learning: student relations, program promotion, accreditation of courses/program, systems requirements, connectivity (IT), system stress testing, implementation, help desk, implementing programming updates/changes, etc.
		Hire Director	Follow institutional process for hiring of new Program Director.
	Program Oversight & Management	Structure/Plan for Program Management	Build/develop a structure/plan for management and oversight of the program, emphasizing responsibility, accountability and responsiveness in carrying out tasks, particularly for integrated or shared tasks.
			Designate lines of reporting, emphasizing skills and abilities over position in order to promote effectiveness.
		Program Governance	Identify/define governance structure for program oversight and strategic direction (School Board of Directors/Trustees committee, separate Board, etc.)
			Build working relationship with governing body to ensure consistent bi-lateral flow of information, communications and strategic thought.

	Subject Area	Task	Details
			Identify/define oversight team (Board Committee, other). Define target integration of DL program with other institutional offices (e.g., Admissions, Financial Aid, Library, Career Services, etc.) and initiate integration conversations and plans with appropriate mangers and personnel.
Accreditation & Compliance	ABA Requirements	A Written Plan	A written plan for distance learning is valuable as part of the institution's overall plan. Resources: See Working Group Model Policy
	ABA Requirements, cont.	Course Approval	Courses offered via DL for JD credit must be approved as part of the school's regular curriculum adoption process (Section 306(b)).
		Course Design	Courses in which more than one-third of the instruction is distance learning and/or uses technology to support interaction are regarded as "distance learning courses" and count toward the maximum of 15 units of distance learning credit allowable in the JD program under Standard 303(e). Courses in which one-third or less of the instruction is conducted technologically or via distance learning DO NOT count as distance learning courses. Course design must provide "regular and substantive" interaction with the professor and other students. (Standard 306(d)(1). To count toward the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction required by Standard 310(b), the course must provide "regular monitoring of student effort" and "opportunity for communication about that effort" (Standard 306 (d) (2) and the learning outcomes for the course must be consistent with Standard 302.

	Subject Area	Task	Details
		Mechanics and Services	The proposed distance learning program must verify students are who they say they are—i.e. identity verification. At this time, password identification suffices for this purpose. (Standard 306(g) Program, and students must have the technological capacity to participate (Standard 306(c).
		Registrar and Enrollments	Establish mechanisms to ensure that students who have not yet completed at least 28 credit hours cannot enroll in distance learning courses. (Standard 306(f)).
		Miscellaneous	Total credits: 15 credits, which may be taken concurrently, after the first year. Note that up to one third of a residential class may be conducted online and that course will not count as a DL course under ABA Standard 306.
	State Bar Examiners	Student notification potential bar rules	As of this writing, no state bar exam requirements differ from the ABA Standards. That said, in the past some states have placed independent restrictions on distance learning coursework for potential bar admissions. Students should be notified, early and often, that it is their responsibility to check in with and keep abreast of individual states requirements regarding admissions requirements.
	State Accreditation		State regional accreditation. Requirements vary by region. See Council on Higher Education Regional Accreditation. *** MOST REQUIRE AT LEAST 6 MONTHS IN ADVANCE***
	Other Regulatory Compliance	Financial Aid	Review Title IV Financial Aid, including Veteran's Benefits, and other Department of Education requirements.
		Accessibility (ADA)	Ensure program incorporates technology (and other) policies which comply with the Americans With Disabilities Act.
		Individual State Educational Registration	Ensure compliance with all 50 states educational registration compliance requirements. See Commission on the Regulation of Post Secondary Education SARA Report.

	Subject Area	Task	Details
		Information Privacy	Ensure student information exchange and communication devices comply with the Family Education Rights and Privacy Act.
		Higher Education Regulation	Statutes typically considered pertinent only to residential students can have unexpected application in distance learning cases. For example, all students, including distance learning students, must receive notice of all incidents of violence on campus under the Cleary Act, even if they may never step foot on campus. Students with accommodations related to medical conditions may have privacy rights governed by HIPPA. Title IX and other gender-based discrimination laws may apply to online interactions, particularly if one member of the community is deemed to have harassed another and such behavior is reported to school authorities. In some cases, a full regulatory audit by internal counsel will be an appropriate review to ensure compliance.
Planning, Development & Project Definition Process	Vision & Strategy	Strategic Planning	3 years in advance of proposed implementation date, conduct strategic planning process with trustees, faculty, administration, key personnel (including IT) to define vision for the program, strategic initiatives, and strategic objectives for development, design and implementation. Strategic initiatives/objectives should include scoping activities, including market studies, feasibility assessment, financial evaluation and change facilitation.
	Market Research	Engage Business Consultants	Following definition of strategic objectives, engage knowledgeable and experienced consultant to conduct market and feasibility studies to gain comprehensive understanding of the marketplace, revenue potential, risks and limiting factors using accepted institutional protocols/processes.
			Conduct comprehensive study of market for proposed program
			Define “go/no-go” parameters for program (cost/benefit, ROI)
		Define Potential Target Markets	Define target market(s) for program based upon results of research
	Business & Financial Modeling	Business & Financial Modeling	Model program options based upon vision and strategy and results of market study analysis. Engaging experienced, professional business consultants for this activity is highly recommended.

	Subject Area	Task	Details
		Analyze Model Results	Critically evaluate results of business & financial modeling to assess program feasibility & refine target markets. Begin to brainstorm curriculum and courses.
Marketing & Recruiting	Marketing Strategic Plan	Develop High-Level Marketing Strategy	Based upon results of market research, develop branding and marketing strategy for new program, develop high-level strategic plan for marketing program, including branding (extension of current institution brand? Entirely new brand? Hybrid approach?), platforms for marketing delivery, etc.
	Marketing Strategic Plan, con't	Develop Program to Promote New DL	Based upon results of high-level marketing strategy, develop program to promote new Distance Learning program, including presentation of brand or development of new one.
	Marketing/ Promotion Implementation	Evaluate Staffing & Capabilities	Based upon strategic planning, evaluate sufficiency of staffing, expertise and experience to undertake marketing effort for DL Program, including branding efforts.
		Enhance Staffing as Needed	Based evaluation of existing experience & capabilities, enhance staffing as needed to ensure sufficient staffing for effective marketing of DL Program.
		Implement Marketing Strategy/Branding	Define path for implementing branding and marketing strategy, including key messages for target markets, impact assessment, securing feedback from target markets, incorporation of feedback/evolution of marketing, etc.
	Promotion & Lead Generation	Lead Generation	Define parameters/tools for lead generation.
		Lead Management & Follow-Up	Define how leads are managed, taking into account best practices for inquiry responses in an online environment.
	Measure Impact of Marketing & Promotion Efforts	Develop Tool(s) for Measuring Promotion Impact	Define tools for measuring impact of marketing and program promotion efforts.
Curriculum & Courses	Program Design	Curriculum Design	Define whole curriculum, including all program courses, individual courses and course parameters, as well as program and course-level learning goals. Key consideration: are you repurposing a residential program into an online program, or launching a wholly new program in the online space? Will the program be sequential, will courses be available on a carousel, or a combination?

	Subject Area	Task	Details
		Develop/Build Individual Courses	Build each course, with core involvement by instructors/professors, ensuring that programmatic goals are met. TIMELINE: ensure that each course, but particularly introductory classes that are prerequisites to others at a higher level (as these must be run first), are developed and FULLY STRESS TESTED will in advance of the go-live date. Allow sufficient time for issues with connectivity, presentation, sound, interactivity, etc. to be fully tested (Functionality and Stress), errors corrected and fully RE-TESTED to a clean test prior to "Go Live".
Defining Program Needs	Refine Program Definition	Refine Program Definition & Conduct Initial Assessment of Technology and Connectivity Needs	Based upon results of market study and business and financial modeling, refine program definition to maximize market impact and revenue potential. Conduct initial assessment of personnel and technological needs here so they can be well and clearly understood going forward. Utilize outside expertise if needed to ensure complete understanding of technological and connectivity demands. Evaluate technological design, learning modality (synchronous, asynchronous or blended) and learning management systems (LMS). Consider engaging outside assistance at this time relative to technological needs, including aspects of system integration and functionalities.
	Gap Assessment & Resolution	Internal Capabilities & Detailed Gap Assessment	Based upon results of refined program definition, conduct internal assessment of existing capabilities and skill/expertise/capabilities gaps relative to program design, marketing, implementation, administration, oversight and regulatory compliance and reporting.
		Define Program Needs	Based upon market study, initial internal needs & capabilities assessment, technology assessment and gap assessment, define specific program needs (personnel, hardware, software, connectivity, marketing, management, oversight, etc.)
		Fill Gaps	Based upon program needs assessment, identify individuals/organizations appropriate to fill gaps in capabilities assessment and contact/issue RFP.

	Subject Area	Task	Details
	Engage Third Party Partners	Select & Contract With Necessary Third Party Providers	2–2 ½ years in advance of program implementation ("Go Live"), utilize the appropriate selection process for your institution. **Word to the Wise: select and contract **early**, with the provider that (a) will best meet the needs of your program, (b) has a proven track record of meeting deadlines, (c) customarily works with and will develop internal people, successfully addressing challenges, and being consistently available during and after the project engagement. The best provider will not always be the party who presents the lowest bid.
		Actively engage/partner with Third Party Providers	Once preferred provider is under contract, actively engage with the provider's teams to build a positive relationship and enhance understanding of internal stakeholders
Information Technology	Technology Design	Define IT Modality & Associated Needs for Distance Learning	In partnership with third-party IT provider, study and comprehensively define IT modalities, and needs for distance learning, including but not limited to: connectivity, capacity, monitoring, course presentation, data collection, on-line testing, hardware, software, etc.
		Select Distance Learning Modality	Select a learning modality (e.g. synchronous, a synchronous, blended) based upon program design, delivery, content, student body, technological constraints, etc.
		Implement Distance Learning Modality of Choice	In partnership with third-party IT provider, implement selected distance learning modality.
	Coding Courses	Code Individual Courses	Code each course, by module, to the platform and programming you have chosen.
	Course Testing	Test Plan	Third party IT provider and in-house IT personnel develop comprehensive Test Plan, including both functionality and "stress" tests, for all aspects of the course.
		Test Box	In concert with IT personnel/IT provider, select and program Test Box for running course testing.
		Upload Developed courses to a Test Box	Once each module/course has been coded, upload the coded course to your "test box". This is an off-line server that exactly mirrors your live (i.e. production) systems, but does not exist in a "live" space.

	Subject Area	Task	Details
		Develop Test	Partner with Third Party IT Provider and internal IT personnel to develop comprehensive test plan for all aspects of course
		Test the Course	Utilizing both in-house personnel and IT contractor personnel, conduct comprehensive test of the course consistent with Test Plan.
		Fix Errors	Per results of testing, revise code as needed to correct errors.
		Test Again Until Clean	Continue the cycle of "fix errors, test again" until tests are error free (i.e. "clean") for at least two cycles.
	Course Testing—Live Environment	Migrate Course to "Live" Box	Migrate the final "clean" code to the institution's "Live" box.
		Test	Test the course in a live environment, utilizing both in-house personnel and IT contractor personnel.
		Fix errors	Per results of testing, revise code as needed to correct errors.
		Test Again Until Clean	Continue the cycle of "fix errors, test again" until tests are error free (i.e. "clean") for at least two cycles.
	GO LIVE	Go live	Put course into full, live environment production.
IT Support	Help Desk	Establish Help Desk and Ticket System for Student and Instructor support	12-18 Months in advance of Go Live, formally establish a "Help Desk", with best practices "ticket system" to provide timely, likely 24/7 support to students and faculty. Incorporate CRM best practices as best suited to your program. If your institution does not have a robust IT department/infrastructure, this activity may need to take place earlier to ensure staffing with fully trained Help Desk personnel during implementation, start-up and "Go Live" phases.
		Conduct Search Process	To the extent necessary per your institution's hiring guidelines, initiate search for fully qualified Help Desk personnel. Ensure mandatory search parameters include experience with systems utilized in distance learning program, reporting software, customer service/student assistance and effective communications.
		Hire Help Desk Personnel	Follow institutional process for hiring of Help Desk personnel.

	Subject Area	Task	Details
		Train Help Desk Personnel	Train new Help Desk Personnel on all aspects of distance learning systems, connectivity, chat rooms, posting, etc.
		Set Expectations for Help Desk Users	Develop communications and materials, as appropriate, to set expectations for what the Help Desk does and does not do. Ensure that these communications are fully consistent with (a) any contracts with Help Desk personnel and (b) distance learning and other student "handbooks"
Pilot Course	Marketing & Incentives	Define Parameters for Pilot	Define parameters for piloting the course—i.e. potential provision of incentives for students to participate and provide feedback (lower cost or free tuition, tuition credit towards another course, etc.), student selection criteria, solicitation methodologies, feedback sought, methods and timing for same, processes for tracking student participation, securing and evaluating student feedback and incorporating into course, etc.
		Introduce Course	Introduce/market pilot course to target student population as previously established.
	Student Feedback	Define Mechanism for Securing Feedback	Evaluate and select mechanism(s) and timing for securing student feedback (i.e. consistently throughout the course, at the end, during defined points, etc.)
		Develop Feedback Mechanism(s)	Develop feedback mechanism (survey, questions, etc.) to evaluate student experience.
		Solicit Participants	Solicit participants for pilot from population defined by parameters established.
		Participant Selection	Select pilot course participants.
	Student Participation	Track Participation	Pursuant to parameters previously established, track student participation to ensure valid basis for feedback.
		Secure Student Feedback	Utilizing developed feedback mechanisms.
	Evaluation and Revision	Evaluate Pilot Feedback	Compile results from feedback mechanisms and critically evaluate.
		Incorporate Feedback Into Course	To the extent deemed necessary based upon feedback from pilot course, incorporate changes into final course.
Student Support	Student Recruitment	Define Timeline for student recruitment	Determine timelines for distance learning recruitment, and how they mesh with standard (on campus) recruitment efforts.

	Subject Area	Task	Details
		Recruitment Calendar	Build institutional recruitment calendar, accounting for additional tasks associated with distance learning program(s).
		Management of Leads	Determine how distance learning leads will be managed (in-house, third party), and how that process will mesh/coordinate with existing recruitment efforts.
		Resource Management in Recruiting	Identify any potential "crunch times" (i.e. fall enrollment, when residential enrollments may get more attention, off-cycle enrollments that may run up against holiday and vacation times, etc.)
	Student Contact	Online Student Retention	Create a process/plan for online student contact, "check in", assistance and retention
	Financial Aid	Financial Aid Calendaring	Partner with financial aid in the recruitment process to ensure that the Distance Learning calendar is incorporated into the Financial Aid Office processes.
		Distance Learning Financial Aid	Ensure that distance learning students are appropriately wrapped into Financial Aid Office processes so students have equivalent opportunities for securing financial aid.
	Academic Support	Incorporation into Distance Learning Program	Ensure that academic support is incorporated into course and curriculum development, including ADA compliance
	Student Information	Handbook Availability	Ensure that all Student Handbook information is available to distance learning students. Hard copies are likely not appropriate for Distance Learning Students. Online versions should be considered.
		Distance Learning Information	Ensure that information regarding distance learning is incorporated into the Student Handbook.
	Career Services	Placement Program for Online Students	Incorporate placement programs for online students into career services processes and programs, including, where appropriate, internships as well as traditional employment programs.
Commencement	Online Student Engagement	Assess Online Student Desire for Involvement in Commencement Process	Determine whether online students will be accorded the same or similar opportunities to participate in commencement. Options include: separate live (on campus) commencement; live commencement in combination with residential students; no formal commencement, some form of online commencement event.

	Subject Area	Task	Details
		Incorporate Online Students	To the extent that online students will be afforded an opportunity to participate in a live, on campus commencement, ensure that Communications and/or other relevant office incorporates all online graduating students into the commencement communications loop.
	Commencement Activities	Commencement Procedures & Schedule	To the extent that online students will be afforded an opportunity to participate in a live, on campus commencement, ensure that they are fully informed as to commencement schedule, procedures and other details.

Appendix C

Definitions

(1) "Asynchronous" means "not at the same time." An asynchronous course is one in which the instruction is delivered at one time and the work can be done at a different time. In asynchronous classes, students and teachers use e-mail, discussion boards, listservs, wikis, and other technologies that allow them to communicate without having to be in the same virtual or physical space at the same time.

(2) "Class" means an individual one-time offering of a course.

(3) "Chat" means a synchronous, interactive text-based tool that allows two or more participants to hold a written conversation.

(4) "Course" means a focused body of instruction offered by an education provider. A course may be made up of one or more classes.

(5) "Delivery Mode" means the primary method or technology used to deliver instructional information to the student and used for communication between the instructor and the students. Delivery methods may include streaming video or web-based synchronous systems to individual computers or group-gathering sites, interactive asynchronous systems, or static post systems.

(6) "Distance Learning" means learning that takes place when the instructor and student are separated by space and/or time. The gap between the two can be bridged using technology such as videoconferencing and online technology.

(7) "Discussion Boards" means online web tools that allow multiple users to post asynchronous comments to single or multiple conversations.

(8) "Learning Management System" means online classroom portal through which faculty and students access information, learning material, and course activities.

(9) "Listservs" means mailing list program for communicating with other people who have subscribed to the same list. Using e-mail, you can participate in listservs pertaining to your topics of interest. When you submit a message to the server, your message is relayed to all those on the listserv. You receive messages from other participants via e-mail.

(10) "PC-based Videoconferencing" means online video technology that allows two or more people to participate synchronous conversations from individual PC stations. Conferencing tools may be video and audio, or only audio.

(11) "Post" means the act of adding a piece of information to a website, discussion board, wiki page, or other common online group site.

(12) “Posted Material” means resources, written materials, video clips, podcasts and audio clips, websites, articles, and other written material placed in a common location for review and discussion, typically by faculty.

(13) “Room-based Videoconferencing” means synchronous videoconferencing technology that feeds an interactive video into a classroom or other group setting. Monitors at the front of the room project activity at a distant site and students speak to the distant site using a microphone system.

(14) “Self-paced Course” means a set of static material that students may access and work through at his or her own pace. While some assignments may be required, students are not required to submit those assignments in a specific order or in cooperation with the instructor or any other person. There is little or no interaction with other participants and all work is due at a single, final deadline.

(15) “Synchronous” means a communication where two or more people occupy the same physical or virtual space at the same time and are able to communicate and interact with each other live and in real time within that space.

(16) “Video Streaming” means live video streamed into a classroom or group setting from another location. Unlike room-based videoconferencing, video streaming provides little or no opportunity for meaningful interactivity unless supplemented with additional tools.

(17) “Wikis” are internet tools that allow multiple individuals to contribute to a single draft document, spreadsheet or presentation from common webpage.

Appendix D

Selected ABA Standards for the Approval of Law Schools 2015-2016

Each year, the ABA updates its standards book to include new or revised standards and interpretations. The version that is current as of this publication is the standards book for 2015–2016. In 2014, the ABA concluded a six-year (2008-2014) comprehensive review of the Standards, and it was "concurred in" by the ABA House of Delegates in August 2014. These Standards revisions and new standard became effective on August 12, 2014, at the conclusion of the ABA Annual Meeting. Sweeping changes, particularly to chapter 3 related to the core of the educational programming of law schools, will become effective over the next three years. Publishing outcomes, standards for granting credit, and use of assessment data in both longitudinal institutional assessment and continuous improvement, were all outgrowths of these changes.

Below, simply for ease of location and reference, are some of the most important curricular standards and some others that specifically relate to distance learning. ABA Standards adopted in 2014 are must be implemented by 2017 per the ABA's phased implementation plan. Please note the rolling implementation schedule described in the memo posted on the ABA website from the Managing Director of Accreditation, Barry Currier. A redlined copy of the standards showing the changes made in 2014 is available on the ABA Section's website at http://www.americanbar.org/groups/legal_education/resources/standards.html. The Standards Review Committee page (http://www.americanbar.org/groups/legal_education/committees/standards_review.html) includes some of the history of the standards review process.

As noted in Chapter 4 of the main text, the new and revised ABA Standards, together, require law schools to complete extensive work on learning outcomes, data collection and analysis, reporting, and data-driven decision making. None of these standards uniquely apply to distance learning programs. To maintain institutional compliance, data on the JD program at any school will , at a minimum, be required. It is recommended that institutions collect and analyze data on all programs with significant enrollment within the law school to comply with Standard 315.

However, distance learning programs will often provide a model for other programs on how to collect and use data in program evaluation and improvement. By the very nature of well-designed distance learning curriculums, significant data will be available to the school from formative and summative assessments, student activity tracking, and overall progress toward objectives. Resources for assessment and analysis of distance learning program data will still be required, but the availability of rich data on student achievement –characteristic of properly designed online programs—will often provide a model for compliance in other areas of the school.

Learning outcomes for the program of legal education must be published:

Standard 301. OBJECTIVES OF PROGRAM OF LEGAL EDUCATION

(a) A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.

(b) A law school shall establish and publish learning outcomes designed to achieve these objectives.

The minimum outcomes of a sound program of legal education must be:

Standard 302. LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

(a) Knowledge and understanding of substantive and procedural law;

(b) Legal analysis and reasoning, legal research, problem-solving, and written and oral

communication in the legal context;

(c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and

(d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Schools must provide a curriculum that includes experiential learning, and overall prepares graduates for initial entry into the legal profession:

Standard 303. CURRICULUM

(a) *A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:*

(1) *one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;*

(2) *one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and*

(3) *one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:*

(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;

(ii) develop the concepts underlying the professional skills being taught;

(iii) provide multiple opportunities for performance; and

(iv) provide opportunities for self-evaluation.

(b) A law school shall provide substantial opportunities to students for:

(1) *law clinics or field placement(s); and*

(2) *student participation in pro bono legal services, including law-related public service activities.*

Schools must implement a plan for continuous improvement using data from assessment of the program of legal education, including student learning outcomes:

Standard 315. EVALUATION OF PROGRAM OF LEGAL EDUCATION,

LEARNING OUTCOMES, AND ASSESSMENT METHODS

The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.

The types of data schools may collect and use as part of the assessment are described in Interpretation 315-1 of standard 315:

Interpretation 315-1

Examples of methods that may be used to measure the degree to which students have attained competency in the school's student learning outcomes include review of the records the law school maintains to measure individual student achievement pursuant to Standard 314; evaluation of student learning portfolios; student evaluation of the sufficiency of their education; student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge; bar exam passage rates; placement rates; surveys of attorneys, judges, and alumni; and assessment of student performance by judges, attorneys, or law professors from other schools. The methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school and law schools are not required by this standard to use any particular methods.

Schools must report on the efficacy of educational programs and activities in the self-study required for periodic reaccreditation:

Standard 204. SELF STUDY

Before each site evaluation visit the law school shall prepare a self-study comprised of (a) a completed site evaluation questionnaire, (b) a statement of the law school's mission and of its educational objectives in support of that mission, (c) an assessment of the educational quality of the law school's program, (d) an assessment of the school's continuing efforts to improve educational quality, (e) an evaluation of the school's effectiveness in achieving its stated educational objectives, and (f) a description of the strengths and weaknesses of the law school's program of legal education.

School may provide increased opportunities for distance learning in the core JD program:

Standard 306. DISTANCE EDUCATION

(a) A distance education course is one in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously.

Credit for a distance education course shall be awarded only if the academic content, the method of course delivery, and the method of evaluating student performance are approved as part of the school's regular curriculum approval process.

(c) A law school shall have the technological capacity, staff, information resources, and facilities necessary to assure the educational quality of distance education.

(d) A law school may award credit for distance education and may count that credit toward the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction required by Standard 310(b) if:

(1) there is opportunity for regular and substantive interaction between faculty member and student and among students;

(2) there is regular monitoring of student effort by the faculty member and opportunity for communication about that effort; and

(3) the learning outcomes for the course are consistent with Standard 302.

(e) A law school shall not grant a student more than a total of 15 credit hours toward the J.D. degree for courses qualifying under this Standard.

(f) A law school shall not enroll a student in courses qualifying for credit under this Standard until that student has completed instruction equivalent to 28 credit hours toward the J.D. degree.

(g) A law school shall establish an effective process for verifying the identity of students taking distance education courses and that also protects student privacy. If any additional student charges are associated with verification of student identity, students must be notified at the time of registration or enrollment.

Distance learning programs may use standard technologies for delivery of the education and a variety of validation methods for determining student identity:

Interpretation 306-1
Technology used to support a distance education course may include, for example:

> *(a) The Internet;*
>
> *(b) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;*
>
> *(c) Audio and video conferencing; or*
>
> *(d) Video cassettes, DVDs, and CD–ROMs, if the cassettes, DVDs, or CD–ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (a) through (c).*

Interpretation 306-2
Methods to verify student identity as required in Standard 306(g) include, but are not limited to~~:~~, (i) a secure login and pass code~~;~~, (ii) proctored examinations~~;~~, and (iii) other technologies and practices that are effective in verifying student identity. As part of the verification process, a law school shall verify that the student who registers for a class is the same student that participates and takes any examinations for the class.

Law schools must measure education delivered in credit hours, using the Department of Education's mandated "Carnegie Unit" definition for the student work required for each credit hour of credit granted:

Standard 310. DETERMINATION OF CREDIT HOURS FOR COURSEWORK

(a) A law school shall adopt, publish, and adhere to written policies and procedures for determining the credit hours that it awards for coursework.

(b) A "credit hour" is an amount of work that reasonably approximates:

> *(1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time; or*
>
> *(2) at least an equivalent amount of work as required in subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours.*

Student coursework toward credit hours can be flexibly designed, so long as the minimum verifiable student work per credit hour can be established:

> *Interpretation 310-1*
> *For purposes of this Standard, fifty minutes suffices for one hour of classroom or direct faculty instruction. An "hour" for out-of-class student work is sixty minutes. The fifteen-week period may include one week for a final examination.*

Interpretation 310-2
A school may award credit hours for coursework that extends over any period of time, if the coursework entails no less than the minimum total amounts of classroom or direct faculty instruction and of out-of-class student work specified in Standard 310(b).

The academic calendar and program requirements now focus on counting credit hours instead of minutes of instruction, and are much friendlier to alternative means of delivering instruction:

Standard 311 ACADEMIC PROGRAM AND ACADEMIC CALENDAR

(a) A law school shall have an academic year of not fewer than 140 days on which classes and examinations are regularly scheduled in the law school, extending into not fewer than eight calendar months. The law school shall provide adequate time for reading periods and breaks, but such time does not count toward the 140-day academic year requirement.

(b) A law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.

(c) A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and, except in extraordinary circumstances, no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.

(d) A law school shall not permit a student to be enrolled at any time in coursework that~~,~~ exceeds 20 percent of the total credit hours required by that school for graduation.

(e) Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

(f) A law school shall adopt, publish, and adhere to a written policy requiring regular class attendance.

Law schools must use both formative and summative assessment of student learning:

Standard 314. ASSESSMENT OF STUDENT LEARNING

A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.

Interpretation 314-1
Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning.

Interpretation 314-2
A law school need not apply multiple assessment methods in any particular course. Assessment methods are likely to be different from school to school. Law schools are not required by Standard 314 to use any particular assessment method.

Appendix E1

Model Law School Distance Learning Policy

1. Purpose

This policy is designed to guide the law school in the development, delivery, and evaluation of JD distance learning education in accordance with the requirements of American Bar Association's Standard 306.

2. Definitions

2.1 Distance Education. The American Bar Association defines a distance education course as one in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously. In accordance with Interpretation 306-1 of the ABA Standards, various technologies may be used to support instruction in a distance learning course, including the Internet, audio and video conferencing, open or closed circuit broadcasting or wired/wireless communication, and various physical media (e.g., DVD) technologies.

2.2 Distance Learning Course ("Course"). A Course is a discrete product of developed material, including but not limited to, syllabi, introductory material, articulated learning goals, assigned materials (readings, podcasts, web links, text assignments, prepared PowerPoints, etc.), assignments and assessment mechanisms. A Course is a completed unit that may be taught multiple times.

2.3 Distance Learning Class ("Class"). A Class is the version of a course that is delivered by a teaching professor and taught to students. There may be multiple classes for a single course. Classes may be delivered either asynchronously or synchronously. See sections 2.7 and 2.8, below.

2.4 Course Developer. A Course Developer is the person who designs and prepares a course, paying particular attention to developing appropriate materials, activities and assessments tied to learning goals. A Course Developer may be a faculty member with specific content knowledge, and/or learning specialists and technical experts tasked with developing and designing a course.

2.5 Teaching Faculty. A Teaching Faculty member is a person who executes and delivers a class. Teaching Faculty interact with students, provide feedback, assessment, and other appropriate material.

2.6 Distance Learning Program Administrator ("Program Administrator"). The Program Administrator is the person who is responsible for training of faculty, development and quality review of courses, and ongoing evaluation and review of classes. In different institutions, this person may be the Academic Dean, Distance Learning Program Coordinator, or some other person designated to oversee the Distance Learning Program.

2.7 Asynchronous. An asynchronous class is one in which the instruction is delivered at one time and the work can be completed at different times. In asynchronous classes, students and teachers use e-mail, discussion boards, listservs, wikis, video or audio posts, and other technologies that allow them to communicate without having to be in the same place at the same time.

2.8 Synchronous. A synchronous class is one in which teachers and students are in different physical locations, but conduct two-way communication with virtually no time delay, allowing participants to respond in real time.

2.9 Hybrid or Blended. A hybrid or blended class is one that includes both live, in-person sessions and additional asynchronous and/or synchronous distance learning sessions.

3. Courses

3.1 Each Course developed to be delivered through distance learning by the law school will be designed to utilize the technological resources available at the institution, supportable by the institution, and reasonably available to student populations.

3.2 Each Course will maintain outcome standards consistent with Standard 302. All Courses will include student based outcome goals, and assessments and evaluations of student outcomes.

3.3 Each Course will include sufficient interactive tools and course design elements that allow faculty and students interactive opportunities that equal or exceed the interaction found in a traditional classroom setting. See Standard 306(d).

3.4 All Courses developed by law school employees and its contractors are owned solely by the law school.

3.5 Every course in the law school's residential curriculum may be redesigned as a Course and taught as a Class, so long as the Course is approved for the Distance Learning program by the Program Administrator and/or Academic Dean.

4. Classes

4.1 All Classes will meet the minimum design requirements of Courses described in section 3. Courses, above.

4.2 Each Class will protect student privacy according to federal and institutional Family Education Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA) guidelines. All distance learning Classes will be provided from secure sites, and all required course elements that require student identification will be limited to those sites.

4.3 Each Class will require students to have, at minimum, a unique login and password, issued to the student through the law school's standard student verification protocols.

4.4 All required examinations that are not otherwise modified for use of outside materials (e.g., open book exams), will be proctored by appropriate personnel or through available technological means.

4.5 All Classes, and any subsequent modifications to Courses, delivered as Classes through any distance learning means, belong solely to the law school.

4.6 The law school shall obtain a perpetual nonexclusive license for any and all use of all student work developed or presented in a Class.

5. Faculty

5.1 Faculty members who develop a Course, or who teach one or more Classes, will participate in mandatory technology and distance learning teaching training.

5.2 Teaching Faculty will be online, will monitor and, as appropriate, participate in class delivery, for at least the number of hours necessary for the credit hour allocation made to the class.

5.3 Teaching Faculty will answer student questions and concerns within 24 hours during the period in which the Class is offered. If a Teaching Faculty is unable to attend to a course for more than a 24-hour period, the Teaching Faculty will alert students in advance. If the Teaching Faculty will be unavailable to students for more than three days, the faculty member will alert the students and the Program Administrator in advance. If a Teaching Faculty is unavailable due to an emergency, he or she will alert the Program Administrator at his or her first possible opportunity.

5.4 Teaching Faculty will provide regular and concrete feedback on student effort and performance. See Standard 306(d)(2).

6. Students

6.1 All students who participate in Classes must participate in a mandatory orientation program, which will, at minimum, train students in technology used and Distance Learning protocols and etiquette.

6.2 In accordance with the ABA's Standard 306, students may take up to 15 credits via distance learning during their academic career. No distance learning Classes may be taken during the first year, or until at least 28 units have been earned by the individual student. See Standard 306(e) and 306(f).

6.3 All student work that occurs in a distance learning class may be monitored and reviewed by the teaching faculty, program administrator, and other law school personnel.

6.4 All Distance Learning students will abide by the law school's honor code in all Classes, and in all other relevant aspects of the Distance Learning program.

7. Oversight and Administration

7.1 The Program Administrator will oversee all aspects of the Distance Learning program, including the creation of Courses, the delivery of Classes, and ancillary student experiences. The Program Administrator shall ensure systematic, valid, and reliable evaluation of all Distance Learning Courses and Classes to consistently improve quality of content and delivery.

7.2. The Program Administrator will ensure regular monitoring of faculty activity, including faculty interactivity with students, feedback, and assessment.

7.3 The law school will develop a plan for administering the Distance Learning program that provides students access to financial aid, business offices, learning support, library, student services, and other services comparable to those provided to residential students.

7.4 The Distance Learning program will provide reasonable accommodation opportunities to comply with Americans with Disabilities Act requirements.

7.5 The administration of the Distance Learning program is the responsibility of the Dean of the law school. All policies of the law school apply to the Distance Learning program, unless otherwise provided in this policy.

8. Emergency

8.1 In an emergency circumstance that affects the ability of the law school to deliver its residential curriculum in its normal course, distance learning may be used in ways that are not governed by this policy. In such an event, the Program Administrator will set appropriate guidelines.

Appendix E2

Model Student Professional Online Behavior Policy

The administration and faculty want to help you succeed as you work and learn in the online environment. The online program will use the Internet as a medium for instruction and communication. Email is used extensively to send and receive messages to and from the school and professors. Computer and internet security will make these communications both safe and effective for everyone. Here are some key guidelines to get you started.

Professional Online Presence.

Students will be communicating with administrators, faculty members, and fellow students across the nation and globe, some of whom students will never meet in person. The law school community expects its members to respect each other's individual dignity at all times, including when communicating by email. Students can achieve better communication—and results—with special sensitivity to the effect of words and actions upon the recipient of a message. Please follow commonly accepted email protocols and behaviors when emailing the school or other students. A guide to these is set forth below.

a. *Set-up Your Email Filter*: Important email messages and notices will end with the law school domain. Please make sure that your email spam filter does not reject messages from this domain. You should "whitelist" the law school domains or place them in your "trust List" in your email filter. Please re-check these settings several times a year to ensure you are receiving all communications from the law school.

b. *Keep the Law School Informed of Email Address Changes*: If you change your email address (or any of your personal information), you are responsible for updating your permanent records on the school site. You need to be vigilant to ensure that you receive all critical school email announcements.

Computer Hygiene.

Install, update, and regularly use appropriate virus protection software: Antivirus software computer programs attempt to identify, neutralize or eliminate malicious software. Examples of virus protection programs include Avira, Cisco Security Agent, eSafe, LinuxShield, McAfee VirusScan, Norton AntiVirus, PC Tools, AntiVirus and Windows Defender. Be extraordinarily careful when downloading "free" software, collections of emoticons, weather bugs and the like. These almost always contain spyware (to report to others what you are doing on the Internet) and/or viruses.

1. *Use spyware protection on your computer:* Spyware is computer software that is installed surreptitiously on a personal computer to intercept or take partial control over the user's interaction with the computer, without the user's informed consent. Many programmers and some commercial firms have released products designed to remove or block spyware.

2. *Use a firewall on your PC*: A firewall is a device or set of devices configured to permit, deny, encrypt, or proxy all computer traffic between different security domains based upon a set of rules or other criteria. A firewall's basic task is to regulate some of the flow of traffic between computer networks of different trust levels. If you are accessing coursework through an employer's system, your employer may have firewall protection installed.
3. *Check browser security and ensure the school site is in an appropriately trusted zone.* Typical examples are the Internet, which is a zone with no trust, and an internal network, which is a zone of higher trust.

Expectations Regarding Electronic Communications

1. All email to and from the law school is governed by the law school's Code of Conduct, the Academic Use Policy and any other relevant rules and policies set forth by the law school. Students should review these codes as part of the orientation process.

1. If your Law School requires you to use the email address provided to you by your institution then you should check that email at least once daily and communicate using that email.

2. DO NOT USE ALL CAPS in your emails. It is considered shouting.

3. Use symbols for emphasis, rather than CAPS. For example: "That *is* what negligence means." Use underscores for underlining. For example, "_War and Peace_ is my favorite book."

4. Use emoticons (smileys) sparingly, and never in professional communications. Do not assume that a smiley face will cure an otherwise insulting comment.

5. Think before you send an email. If in doubt, leave it out. If not sure, wait overnight. If you are upset, wait overnight to send emotional responses to messages. You should not send heated messages even if you are provoked.

6. Do not attack or insult another, even if it is meant as a joke.

7. Use spell check or proofread before you send.

8. Avoid using Text Messaging style.

9. If you have a technological problem, call or email [Insert Law School] Tech. Support. Please be kind and courteous, even if you are frantic. You will get help just as fast and the exchange will be more pleasant for all.

10. You should assume that your email is not secure. Never put in a mail message anything you would not put on a postcard.

11. Respect the copyright on material that you reproduce. Almost every country has copyright laws.

12. If you are forwarding or re-posting a message, do not change the wording. You may shorten the message and quote only relevant parts, but be sure you give proper attribution and use

ellipses or "[deleted]" to indicate redactions.

13. In general, it is a good idea to check your email messages in reverse chronological order before responding to a message. Sometimes a person who asks you for help (or clarification) will send another message that says, “Never mind.” Also make sure that any message you respond to was directed to you. You might be cc:ed rather than the primary recipient.

14. Always include your name and student ID number on an email.

15. Make things easy for the recipient. Many mailers strip header information, which includes your return address. Be sure to include a line or two at the end of your message with contact information. You can create this file ahead of time and add it to the end of your messages (a "signature" file.) (Some mailers do this automatically.)

16. Keep your signature short; no longer than 4 lines. Do not include quotes or extraneous material.

17. Be careful when you reply; you may actually be replying to a group or "reply to all." Do not reply to emails sent to you from the law school that instruct you not to reply.

18. Avoid forwarding chain mail of any kind. This is considered spam, and it clogs inboxes.

19. Take care when forwarding email. Be sure you have permission from the sender to circulate.

20. Watch cc's when replying. Don't continue to include people if the messages have become a 2-way conversation.

21. Remember that you communicate across the globe. If you hope for an immediate response, the recipient might be asleep when it arrives. Give them a chance to wake up and login before assuming the mail did not arrive.

22. If your message is truly time sensitive, consider using the “high-importance” function in your email. .

23. It is courteous to include the word "Long" in the subject header for messages that will take time to read. A message over 100 lines is considered "long".

24. Remember that the recipient's culture, language, and humor have different points of reference from your own. Be careful in using slang. Under all circumstances, avoid sarcasm.

25. Mail should have a subject heading which reflects the content of the message. Avoid forwarding confidential information by mistake. Also, change subject lines when you forward, if applicable.

26. Be alert to "phishing" emails that appear to be from a reputable source. These often ask you to supply personal information: address, phone number, even your social security number. Never, ever fall for one of these messages. Call the company first to confirm.

27. Be extraordinarily careful when downloading "free" software, collections of emoticons, weather bugs, and the like. These almost always contain spyware (to report to others what you are

doing on the Internet) and/or viruses. Often these viruses do not activate for some time, long after you forgot downloading something interesting.

28. If you do not have time, reply briefly to an e-mail, letting the sender know that it was received, even if you will send a longer reply later.

29. Know how large a message you are sending—and how large an attachment. For large attachments, consider zip software to compress the material. Alternatively, a cloud storage system can be used to share files.

30. Don't send unsolicited information.

31. Take care that delivery receipts are used only when necessary and vacation responses (out-of-office messages) don't unintentionally go to entire listservs.

32. If you find a personal message has gone to a list or group, immediately send an apology to the person and to the group.

33. If you strongly disagree with one individual on a group discussion, respond directly and privately to that individual rather than to the list or the group.

34. Don't get involved in flame wars. Do not post or respond to incendiary material.

35. Avoid messages or postings that are no more than "I agree, too!"

36. Be aware that html (active content) embedded in emails may not be readable by recipients.

37. Never use gender, ethnic, or racial slurs.

Appendix E3

Asynchronous and Synchronous Model Online Behavior Policies

Asynchronous Course Model Policies

In general, the asynchronous course model can be viewed as a precursor to one's professional life, with responses, deadlines, and interactions taking place on a less-structured level than a synchronous course. The following are sample policy components for asynchronous classes.

Communication Model Policy Components

(A) When composing an email, discussion response, etc., ensure that you are following the appropriate style guidelines (APA, MLA, etc.) and that your writing follows proper grammatical and mechanical rules.

(B) Do not use 'text-speak,' all-caps, or emoticons.

(C) Opportunities for written response should generally be treated as professional writing exercises. Proofread and review your responses carefully.

(D) As a general rule, copying and pasting of outside source material should be avoided unless you are specifically asked to include such content; in these cases, proper style guidelines must be followed, and attribution to the source material made, to ensure compliance with Fair Use and [*university plagiarism/academic honesty*] policies.

(E) To avoid confusion, start new discussion threads or email chains when shifting away from a previous topic.

(F) Any online discourse should be substantive; thoughtful analysis that adds new elements to the conversation and furthers the discussion should be used. Promoting feedback from others and supporting your comments with examples or relevant outside sources (articles, media, etc.) is encouraged

Behavior and Privacy Model Policies

(A) Be respectful, positive, and constructive when responding to your peers and/or instructor.

(B) Use of profanity or obscene content should be avoided.

(C) Be aware that cultural differences among your peers could cause sarcasm or certain types of humor to be misconstrued. To avoid offensive or insulting behavior, avoid humor related to controversial subjects (religion, sex, gender, ethnicity, etc.) or personal attacks.

(D) Avoid comments of an extraneously religious or political nature, as such comments can be distracting, disruptive, or potentially offensive to others and are generally considered unprofessional.

(E) Threatening or abusive comments, online bullying, and cyber-stalking will not be tolerated [*and will be subject to institutional policy*].

(F) Online privacy continues to be a sensitive area, so be aware of any institutional policy with regard to social media.

(G) Use of social media varies widely among students and faculty, so don't be offended if a faculty member or peer doesn't respond to a friend/follow request, etc. - in the interest of professionalism, he/she may not be comfortable with such a connection. In general, avoid posting photos or videos of classmates without their explicit permission on social networks or elsewhere. If you have additional questions, FERPA policies are located on *[institutional website]*.

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Synchronous Course Model Policies

Students in regular law school classes generally govern their behavior by adhering to widely recognized norms. For many students, these norms do not automatically carry over to synchronous online classes where, no longer guided by conventional classroom norms, they comfortably and regularly engage in "on camera" behaviors that significantly distract others in the class. These behaviors are particularly disruptive in synchronous classes because they are uniquely visible to other students and to the instructor. Because of the medium, they call attention to themselves and away from class discussion and focus. The following is proposed as a policy intended to minimize and manage these behaviors in synchronous classes.

On-Camera Behavior Policy

As a rule, it is important that you maintain the same norms of behavior in online classes that you adhere to in a traditional classroom setting. This means that you will avoid behaviors that could disrupt class activities and distract other students from participating in those activities. In addition, you should follow norms of civility when dealing with others in the class.

On-camera behavior in online classes also presents unique problems covered by the following guidelines. Unless you have specific permission from the instructor, your behavior in your online class should be governed as follows:

(A) No eating
(B) No babies, animals, or other third parties on camera (including in the background)
(C) No side conversations
(D) No side activities (emailing, texting, etc.; the cameras capture everything)
(E) Use headsets to insure quality audio

(F) Beware of background noise makers
(G) Be mindful of safety issues (don't access while driving, etc.)
(H) Turn off your camera if you have low bandwidth
(I) Tweet about it later (be attentive)
(J) Be on time
(K) Get acquainted with the tech/login
(L) Be present
(M) Be polite
(N) Be professional
(O) Be respectful of instructor, classmates, and the virtual classroom environment
(P) Mute your microphone whenever you are not speaking
(Q) No multi-tasking (it is distracting to yourself and others)
(R) No capture or distribution of online classes

Appendix E4

Faculty and Instructor Online Behavior Guidelines

Technology and Pedagogy General Guidelines

(A) Instructors should ensure that academic materials have been edited and proof-read before going 'live'.

(B) Instructors should facilitate test runs of new courses, courses delivered on new LMS platforms, and courses that are substantially revised, in order to ensure that materials are coherent, consistent, and free of errors. A best practice is to use an objective third party, such as a graduating student, to conduct a 'beta test' of the course. With each iteration of the course, an ongoing review is recommended to ensure internal consistency with deadlines and materials.

(C) Ensure proficiency with the technology being used—instructors should learn how to use the technology properly, and should not "scapegoat" it when things go wrong.

(D) A best practice is for instructors to create a teaching manual to communicate to potential future instructors the teaching goals, course structure, materials and other relevant information related to the creation of the course.

Instructional Guidelines

(A) Instructors should respect deadlines (internal, institutional deadlines as well as those specific to their own classes) related to assessments, grade due dates, etc.

(B) While it is extremely difficult, if not impossible, to effectively prevent circulation or posting/reposting of materials related to classroom materials, discussions and activities, instructors should ensure that there is an explicit policy that prevents students from engaging in such distribution without authorization.

(C) Instructors should ensure that all relevant polices have been transparently communicated to students.

(D) Instructors should ensure they are familiar with all relevant academic and other policies. Faculty can assist in identifying areas in which adequate policies have not yet been formulated at their host institution.

(E) Instructor policies and actions should be consistent within a course (e.g., rewrites, accepting

assignments late).

(F) Relieve faculty from responsibility for enforcing deadlines and polices related to waivers, extensions, etc. by turning that responsibility over to department chair or academic dean responsible. This helps faculty, ensures consistency, and also offers the benefit of having one person who is able to see student performance in a longitudinal setting.

(G) Respect students and student time—be punctual for class, return assessments in a timely manner, foster an engaging and 'safe' classroom environment.

Faculty Communication Guidelines

Good communication is integral to an effective learning environment. To that end, it is important that instructors model effective, respectful and professional communication skills and engage with students in a manner conducive to positive student-faculty interactions. Faculty can be both part of the problem when problems with communication occur, as well as the primary solution to those issues.

(A) Instructors should communicate their policies with students regarding relationships on social media. Faculty should not consent to 'link' or 'friend' current students on any form of social media, optimally until after the student graduates (if at all), or at a minimum after the student has completed the faculty member's course and the academic term

(B) Instructors should take all reasonable steps to facilitate being accessible to students for academic matters, including the use of regular virtual office hours, creating live classes (e.g., through Adobe Connect, Google Hangout), etc.

(C) Students have the right to expect that their questions, concerns, and comments will be responded to by instructors in a timely, respectful, and helpful manner. As a best practice, we recommend that responses be communicated to students within 24 hours.

(D) Responses by instructors should model the type of behavior expected of students—instructor comments should be substantive, professional, respectful and helpful.

Appendix F

Sample Bilateral Course Sharing Agreement

MEMORANDUM OF UNDERSTANDING

between

School A

and

School B

PREAMBLE

This Memorandum of Understanding (MOU) is entered into by and between School A, and School B. School of Law, hereafter referred to as "School B". School A and School B are referred to collectively as "Parties" or individually as "Party."

1. Purpose and Scope

The purpose of this MOU is to outline the relationship between the Parties. The Parties acknowledge the advantages resulting from the sharing of online courses from each Party's online LLM program. This MOU outlines agreements between the Parties for the pilot or trial version of the course sharing program, and is subject to revisions by cooperative efforts between the Parties after one academic year.

Whereas School B and School A are both ABA and NEASC accredited law schools providing high quality legal education, and

Whereas both School B and School A have developed distance learning LLM programs to reach working professionals who wish to advance their legal expertise and credentials, and

Whereas School A maintains a specialty in Space Law, and, in particular, a recognized expertise in Extraterritorial Law and Management, and

Whereas School A has developed a suite of Space Law and Extraterritorial Law and Management courses for its highly interactive, asynchronous online LLM degree, and

Whereas School B wishes to make Space Law and Extraterritorial Law and Management courses available to their online LLM students

Be it agreed that School B and School A wish to enter into a pilot agreement under which School A will provide School B LLM students access to classes in Space Law and Extraterritorial Law and Management.

2. General Provisions

a) School A will provide the curriculum, syllabi, interactivity data, and other information about seven environmental law classes to School B. These classes will include SPC 1000 Space Exploration and Law, SPC 1200 Extraterritorial Contracts, SPC 2000 Orbital Safety and Management Regulation, SPC 3000 Alien and Dalek Relations, SPC 3500 Redshirt, Tribble, and Disposable Organic Regulation, and SPC 4000 Cosmic Debris Management and Regulation. School B will School B will adopt these seven courses into its catalog.

b) The aforementioned classes, once adopted by School B, will be included in the School B catalog, and be available through the School B registration system for their students. Registration dates, start dates, and add drop periods will conform to the School A Distance Learning Program calendar, but all policies governed by the School B student handbook.

c) Starting in the fall of 2013, School B graduate students will have the opportunity to enroll in the aforementioned courses. School B will have the sole responsibility for billing students and collecting tuition, processing financial aid, and dealing with any other student matter in connection with registration and enrollment.

d) At a time agreed upon by the Parties, but no later than one business day before the start of class, the School B registrar's office will provide a roster of enrolled students to School A. Those students will be enrolled in School A online classes and participate alongside School A students, and any other students enrolled through School A partnership programs.

e) At the end of each online term, School A will securely transmit the grades of the participating School B student to the School B Registrar within 10 days of the end of class. Once transmitted, the School B Registrar is responsible for posting grades for participating students.

f) Particular calendars, deadlines, contact information and information secure transmission information will fully developed in an evolving "operating agreement" incorporated into this Memorandum of Understanding.

g) The intellectual property of all courses included in this agreement , including curriculum, content and pedagogy, will remain the sole property of School A.

3. Payment

At the close of the registration and add/drop period, School A will invoice School B the pilot program price of **$_____ per credit** for each School B student enrolled in the program. School B will pay School A within 30 days of receiving this invoice. No reimbursement will be provided for students who fail to complete a course under this arrangement.

The Parties to this Memorandum of Understanding hereby confirm their agreement to its terms by the following signatures:

School A

By _____
Spaceman Spiff
CFO

Date _____

School B

By _____
Sally Ride
Dean and President

Date _____

Appendix G

Data Needs and Ongoing Research

Report of Working Group's Research Committee as of May, 2015

During the inaugural meeting of the Working Group, participants generated a range of practical and theoretical questions. In subsequent meetings, a subcommittee identified three themes on which to concentrate:

Learning Outcomes

The first theme, evident in several of the original questions, concerns the outcome variables that should be measured to determine the effectiveness of distance learning. Although this question is of practical concern for any educator it is also a towering theoretical challenge. Are we interested in retention, knowledge of rules, problem-solving ability, or critical thinking? Are there aspects of legal education that make this question more difficult to answer? Are there moderating variables that influence any outcome variables (i.e., engagement; attention; sociality)? What is the best method to identify the outcome variables from the outset (i.e., current academic literature; consensus; Delphi; guidelines)?

Best Practices

The second theme concerns more practical issues: How can we identify distance learning experts in legal education? What do those experts identify as "best practices"? How can we survey those experts to develop criteria, gain consensus, and identify points of convergence and divergence? What challenges do they experience? What are the barriers that key stakeholders (i.e. gatekeepers) identify in the use of distance learning?

Survey of Distance Learning Activity in Legal Education

The third theme is concerned with creating a "census" of distance learning activities in legal education and describing their characteristics. In order to develop best practices and facilitate research, those closely involved in distance learning in legal education need to be able to recognize each other. Which schools are offering distance learning programs and courses? What are the characteristics of those distance learning activities? Are some subjects and topics offered via distance learning programs more frequently than others? What factors facilitate or inhibit the development of distance learning programs?

Availability of data

Early surveys of schools yielded self-reported lists of programs and anecdotal experiences of individuals, but to date no comprehensive review of law school online activities has taken place. Each year, accredited law schools must report distance learning activities affecting the JD program to the American Bar Association. To date, the ABA has not made this information available to the Working Group, nor, to our knowledge, to any other outside researcher.

In the immediate future, the Research Committee of the Working Group seeks to access existing information, or design parallel data collection methods that will at minimum identify the scope of online programs and classes in US law schools.

As online classes and programs come online, the working group hopes to work with other organizations to tackle additional questions outlined above.

Appendix H

List of Working Group Meetings and Host Institutions

The Working Group for Distance Learning in Legal Education was conceived at the noted Future Ed Conference Series sponsored by the Harvard Center on the Legal Profession and New York Law School and concluding in the spring of 2010. Harvard Law School hosted the convening meeting of the Working Group in Fall 2011, and the group held two substantive meetings each year at host institutions around the United States, as well as breakfast information session for three years at the annual meeting of the American Association of Law Schools. A list of meetings and hosts appears below.

2010—Harvard and New York Law School Future Ed Conference, New York Law School, New York, NY. See https://clp.law.harvard.edu/clp-research/legal-education/

Fall 2011 - Convening Meeting at Harvard Law School, Cambridge, MA

January 2012—AALS breakfast, Washington D.C.

Spring 2012—Dayton Law School, Dayton, OH

Fall 2012 –Thomas Jefferson Law School, San Diego, CA

Spring 2013—AALS breakfast, New Orleans, LA

Fall 2013—North Carolina Central University, Durham, NC

Spring 2013 - Harvard Law School, Cambridge, MA

January 2014 - AALS breakfast, New York, NY

Spring 2014—Washington University, St. Louis, MO

Fall 2014—William Mitchell College of Law, St. Paul, MN

Spring 2015—UC Hastings School of Law, San Francisco, CA

Appendix I

Appendix of Authors and Institutions

From 2011 through 2015, faculty and staff from approximately one hundred academic and other institutions participated in Working Group meetings, advocacy and collaborative efforts, including the development of this document.

Key coordinating authors of and contributors to this document include:

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Athabasca University, Canada

Australian National University

Barry University Dwayne O. Andreas School of Law

Benjamin N. Cardozo School of Law at Yeshiva University

Blackboard, Inc.

Boston University School of Law

Brigham Young University School of Law

CALI / Center for Computer-Assisted Legal Instruction

California Western School of Law

Chapman University School of Law

Charlotte School of Law

Concord Law School—Kaplan University

Drexel University Thomas R. Kline School of Law

Duncan School of Law at Lincoln Memorial University

Elon University / Elon Law

Emory University School of Law

ExamSoft

Florida Atlantic University

Florida A&M University College of Law

Fordham University School of Law

George Mason University School of Law

Georgetown University Law Center

Golden Gate University School of Law

Hamline University School of Law

Harvard Law School

Hofstra University Maurice A. Dean School of Law

IIT Chicago-Kent College of Law

Indiana University Maurer School of Law

InfiLaw

The John Marshall Law School (Chicago)

LexisNexis

Lewis & Clark Law School

Louisiana State University Paul M. Hebert Law Center

Loyola Law School Los Angeles

Loyola University Chicago School of Law

Loyola University New Orleans College of Law

Massachusetts School of Law

Michigan State University College of Law

New York Law School

Nova Southeastern University Shepard Broad Law Center

North Carolina Central University School of Law

Northeastern University School of Law

The Ohio State University Moritz College of Law

Pearson

Penn State - The Dickinson Schools of Law

Roger Williams University Law

St. John's University School of Law

Seattle University School of Law

Suffolk University Law School

Southern University Law Center

Southern Illinois University School of Law

Southwestern Law School

Stanford Law School

Stetson University College of Law

Syracuse University College of Law

Temple University Beasley School of Law

Texas Southern University

Thurgood Marshall School of Law

Texas Tech University School of Law

Thomas M. Cooley Law School

Thomas Jefferson School of Law

Touro Law Center

UC Hastings College of the Law

UNC School of Law

University of Akron School of Law

University of Arkansas School of Law

University of Connecticut School of Law

University of Dayton School of Law

University of Denver Sturm College of Law

University of Hawai'i at Manoa, William S. Richardson School of Law

University of Houston Law Center

University of Miami School of Law

University of Minnesota Law School

University of New Hampshire School of Law

University of New Mexico School of Law

University of the Pacific, McGeorge School of Law

University of Pennsylvania Law School

University of Pittsburgh School of Law

University of St. Thomas School of Law

University of Tulsa College of Law

UNT Dallas College of Law

USC Gould School of Law

Valparaiso University School of Law

Vermont Law School

Villanova University School of Law

Wake Forest University School of Law

Washburn University School of Law

Washington College of Law at American University

Washington University School of Law

Western New England University School of Law

West Virginia University College of Law

Widener University School of Law

William Mitchell College of Law